

Union Calendar No. 389

103D CONGRESS
2D SESSION

H. R. 2721

[Report No. 103-599, Parts I and II]

A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discriminations claims made by Federal employees, and for other purposes.

AUGUST 19, 1994

Reported from the Committee on Post Office and Civil Service with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Union Calendar No. 389

103^D CONGRESS
2D SESSION

H. R. 2721

[Report No. 103-599, Parts I and II]

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discriminations claims made by Federal employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1993

Mr. MARTINEZ (for himself, Ms. NORTON, Mr. FORD of Michigan, Mr. CLAY, Mr. OWENS, Mr. McCLOSKEY, Mrs. SCHROEDER, Mr. MILLER of California, Mr. KILDEE, Mrs. MORELLA, Mr. SAWYER, Mrs. MINK, Mr. DELUMS, Mr. CONYERS, Mr. STOKES, Mr. FOGLIETTA, Mrs. COLLINS of Illinois, Mr. FRANK of Massachusetts, Mr. SERRANO, Mr. TOWNS, Mr. OLVER, Mr. SANDERS, Mr. JEFFERSON, Mr. BLACKWELL, Mr. HASTINGS, Mr. FILNER, and Mr. RUSH) introduced the following bill; which was referred jointly to the Committees on Education and Labor and Post Office and Civil Service

JULY 13, 1994

Reported from the Committee on Education and Labor with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

AUGUST 19, 1994

Additional sponsors: Mr. BAESLER, Mr. SCOTT, Mr. MINETA, Mr. STARK, Ms. FURSE, Mr. WYNN, Mr. JACOBS, Mr. ENGEL, Ms. SNOWE, Ms. BROWN of Florida, Mrs. MEEK, Mr. ROMERO-BARCELÓ, Mr. DIXON, Mr. FROST, Mr. EVANS, Mr. HOCHBRUECKNER, Mr. BORSKI, Mr. PETERSON of Minnesota, Mr. DICKS, Mr. KREIDLER, Ms. MCKINNEY, Mrs. LOWEY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. PENNY, Mr. TORRES, Mr. BROWN of California, and Mrs. UNSOELD

AUGUST 19, 1994

Reported from the Committee on Post Office and Civil Service with an amend-

ment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on July 23, 1993]

A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discriminations claims made by Federal employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Federal Employee Fair-*
5 *ness Act of 1994”.*

6 **TITLE I—ADMINISTRATIVE RE-**
7 **VIEW OF DISCRIMINATION**
8 **CLAIMS**

9 **SEC. 101. AMENDMENTS RELATING TO ADMINISTRATIVE**
10 **DETERMINATION OF FEDERAL EMPLOYEE**
11 **DISCRIMINATION CLAIMS.**

12 *(a) DEFINITIONS.—Section 701 of the Civil Rights Act*
13 *of 1964 (42 U.S.C. 2000e) is amended—*

14 *(1) in paragraph (f) by striking “The term” and*
15 *inserting “Except when it appears as part of the term*
16 *‘Federal employee’, the term”, and*

1 (2) by adding at the end the following:

2 “(o) The term ‘Commission’ means the Equal Employ-
3 ment Opportunity Commission.

4 “(p) The term ‘entity of the Federal Government’
5 means an entity to which section 717(a) applies, except that
6 such term does not include the Library of Congress.

7 “(q) The term ‘Federal employee’ means an individual
8 employed by, or who applies for employment with, an entity
9 of the Federal Government.

10 “(r) The term ‘Federal employment’ means employ-
11 ment by an entity of the Federal Government.

12 “(s) The terms ‘government’, ‘government agency’, and
13 ‘political subdivision’ do not include an entity of the Fed-
14 eral Government.”.

15 (b) *EEOC DETERMINATION OF FEDERAL EMPLOY-*
16 *MENT DISCRIMINATION CLAIMS.*—Section 717 of the Civil
17 Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

18 (1) in subsection (b)—

19 (A) by inserting “(1)” after “(b)”,

20 (B) in the second sentence—

21 (i) by redesignating paragraphs (1),
22 (2), and (3), as subparagraphs (A), (B),
23 and (C), respectively,

24 (ii) in the subparagraph (B), as so re-
25 designated, by striking “and” at the end,

1 (iii) in subparagraph (C), as so redes-
2 ignated, by striking the period at the end
3 and inserting “; and”, and

4 (iv) by inserting after subparagraph
5 (C), as so redesignated, the following:

6 “(D) require each entity of the Federal Govern-
7 ment—

8 “(i) to make counseling available to Federal
9 employees who choose to notify such entity that
10 they believe such entity has discriminated
11 against them in violation of subsection (a), for
12 the purpose of trying to resolve the matters with
13 respect to which such discrimination is alleged
14 (Such entity shall assist such employee to iden-
15 tify the respondent required by subsection (c)(1)
16 to be named in a complaint alleging such viola-
17 tion, shall inform such Federal employee indi-
18 vidually of the procedures and deadlines that
19 apply under this section to a claim alleging such
20 discrimination, and shall make such counseling
21 available throughout the administrative proc-
22 ess.);

23 “(ii) to establish a voluntary alternative
24 dispute resolution process to resolve complaints,
25 except that a Federal employee’s decision to forgo

1 *such process shall not affect the rights of such*
2 *employee under this title;*

3 *“(iii) not to discourage Federal employees*
4 *from filing complaints on any matter relating to*
5 *discrimination in violation of this section; and*

6 *“(iv) not to require Federal employees to*
7 *participate in counseling made available under*
8 *clause (i) or in a dispute resolution process made*
9 *available under clause (ii).”;*

10 *(C) in the third sentence by striking “The”*
11 *and inserting the following:*

12 *“(2) The”,*

13 *(D) in the fourth sentence by redesignating*
14 *paragraphs (1) and (2) as subparagraphs (A)*
15 *and (B), respectively,*

16 *(E) in the last sentence by striking “With”*
17 *and inserting the following:*

18 *“(3) With”, and*

19 *(F) by adding at the end the following:*

20 *“(4)(A) Subject to subparagraph (B), an unlawful em-*
21 *ployment practice of the kind described in section 704(a)*
22 *is established under this section if an employee or applicant*
23 *for employment demonstrates that his opposing any prac-*
24 *tice made an unlawful employment practice by this title,*
25 *his making a charge, testifying, assisting, or participating*

1 *in any manner in an investigation, proceeding, or hearing*
 2 *under this title, or his communicating with the Congress*
 3 *regarding discrimination in violation of this section was*
 4 *a contributing factor in an adverse personnel action that*
 5 *was taken or is to be taken against such employee or appli-*
 6 *cant.*

7 *“(B) Relief under this section may not be granted if*
 8 *the respondent demonstrates, on the basis of the evidentiary*
 9 *standard specified in section 1221(e)(2) of title 5 of the*
 10 *United States Code, that it would have taken the same per-*
 11 *sonnel action in the absence of the conduct described in sub-*
 12 *paragraph (A).”*,

13 *(2) by striking subsection (c),*

14 *(3) in subsection (d)—*

15 *(A) by inserting “(1)” after “(d)”*,

16 *(B) by striking “(k)” and inserting “(j)”*,

17 *(C) by striking “brought hereunder” and in-*
 18 *serting “commenced under this section”, and*

19 *(D) by adding at the end the following:*

20 *“(2) The head of the department, agency, or unit in*
 21 *which discrimination in violation of subsection (a) is al-*
 22 *leged to have occurred shall be the defendant in a civil ac-*
 23 *tion alleging such violation. If a department, unit, or agen-*
 24 *cy is named as the defendant, the court shall freely grant*

1 *leave to amend the complaint to name the head of such de-*
2 *partment, agency, or unit.*

3 “(3)(A) *In any action or proceeding under this section,*
4 *the court, in its discretion, may allow the prevailing party*
5 *(other than an entity of the Federal Government) a reason-*
6 *able attorney’s fee (including expert fees) and costs as a*
7 *court has authority to award under section 706(k), as*
8 *amended from time to time, and the same interest to com-*
9 *pensate for delay in payment as in cases involving*
10 *nonpublic parties.*

11 “(B) *If an action or proceeding brought under this sec-*
12 *tion by or on behalf of a Federal employee is found by the*
13 *court to be unreasonable, groundless, or vexatious, the court,*
14 *in its discretion, may allow the respondent a reasonable at-*
15 *torney’s fee (including expert fees), costs, and interest as*
16 *a court has authority to award to a prevailing party under*
17 *subparagraph (A).”,*

18 (4) *by redesignating subsections (d) and (e) as*
19 *subsections (o) and (p), respectively, and*

20 (5) *by inserting after subsection (b) the follow-*
21 *ing:*

22 “(c)(1)(A) *Except as provided in subparagraphs (B),*
23 *(C), and (D), a complaint filed by or on behalf of a Federal*
24 *employee or a class of Federal employees and alleging a*
25 *claim of discrimination arising under subsection (a) shall*

1 *name as the respondent, and be filed with, the head of the*
2 *department, agency, or unit in which such discrimination*
3 *is alleged to have occurred, or with the Commission, not*
4 *later than 180 days after the alleged discrimination occurs.*

5 *“(B) If, not later than 180 days after the alleged dis-*
6 *crimination occurs, the complaint is filed—*

7 *“(i) except as provided in subparagraph (D),*
8 *with such department, agency, or unit and fails to*
9 *name the head of the department, agency, or unit as*
10 *the respondent; or*

11 *“(ii) with any other entity of the Federal Gov-*
12 *ernment, regardless of the respondent named;*
13 *the complaint shall be considered to be filed in compliance*
14 *with subparagraph (A).*

15 *“(C) A complaint filed under this section with respect*
16 *to a claim of discrimination arising under subsection (a)*
17 *shall be dismissed if—*

18 *“(i) such claim is a grievance that is subject to*
19 *section 7121 of title 5, United States Code; and*

20 *“(ii) the aggrieved Federal employee has, in the*
21 *discretion of the Federal employee, exercised the op-*
22 *tion under section 7121(d) of such title to raise the*
23 *matter under the negotiated grievance procedure be-*
24 *fore filing the complaint.*

1 “(D) A complaint filed by or on behalf of a Federal
2 employee, or a class of Federal employees, employed by a
3 department, agency, or unit in the intelligence community
4 (as defined by Executive Order 12333 or any successor to
5 such order) and alleging a claim of discrimination arising
6 under subsection (a) shall name as the respondent, and be
7 filed with the head of the department, agency, or unit in
8 which such discrimination is alleged to have occurred not
9 later than 180 days after the alleged discrimination occurs.

10 “(2) If the complaint is filed with an entity of the Fed-
11 eral Government other than the department, agency, or unit
12 in which such discrimination is alleged to have occurred,
13 then—

14 “(A) such entity (other than the Commission)
15 shall transmit the complaint to the Commission, not
16 later than 10 days after receiving the complaint; and

17 “(B) the Commission shall transmit a copy of
18 the complaint, not later than 10 days after receiving
19 the complaint, to the head of the department, agency,
20 or unit in which such discrimination is alleged to
21 have occurred (hereinafter in this section referred to
22 as the ‘respondent’).

23 “(3) Not later than 10 days after the respondent re-
24 ceives the complaint from a source other than the Commis-

1 *sion, the respondent shall transmit to the Commission a*
2 *copy of the complaint.*

3 “(d) Throughout the period beginning on the date the
4 respondent receives the complaint and ending on the latest
5 date by which all administrative and judicial proceedings
6 available under this section have been concluded with re-
7 spect to such claim, the respondent shall collect and preserve
8 documents and information (including the complaint) that
9 are relevant to such claim, including the documents and
10 information that comply with rules issued by the Commis-
11 sion.

12 “(e)(1) The respondent shall make reasonable efforts to
13 conciliate each claim alleged in the complaint during the
14 90-day period beginning on the date the complaint is filed
15 under subsection (c).

16 “(2)(A) With respect to such claim, the respondent
17 may enter into a settlement agreement with such Federal
18 employee.

19 “(B) The entity of the Federal Government with which
20 the complaint is filed under subsection (c) shall imme-
21 diately give formal written notice to such Federal employee
22 that such Federal employee may either—

23 “(i) before the expiration of the 90-day period
24 beginning on the date such Federal employee receives
25 such notice, file with the Commission—

1 “(I) a written request for a determination
2 of such claim under subsection (f) by an admin-
3 istrative judge of the Commission, together with,
4 at the option of such Federal employee, a request
5 that the administrative judge request a stay de-
6 scribed in subsection (f)(3)(A);

7 “(II) if such claim alleges discrimination in
8 the Commission or alleges an action appealable
9 to the Merit Systems Protection Board, a written
10 request electing that a determination of such
11 claim be made under the procedures specified in
12 either subparagraph (A) or (B) of section
13 7702(a)(2) of title 5, United States Code, or a
14 request described in subclause (I); or

15 “(III) if such claim alleges a grievance that
16 is subject to section 7121 of title 5, United States
17 Code, but not appealable to the Merit Systems
18 Protection Board, a written request to raise such
19 claim under the administrative and judicial pro-
20 cedures provided in such section 7121 or a re-
21 quest described in subclause (I); or

22 “(ii) in the 90-day period beginning 90 days
23 after the complaint is filed under subsection (c) or in
24 the 90-day period beginning on the date such Federal
25 employee receives such notice (whichever 90-day pe-

1 *riod begins later), commence a civil action in an ap-*
2 *propriate district court of the United States for de*
3 *novo review of such claim.*

4 *“(3)(A) Such Federal employee may either—*

5 *“(i) file a written request described in clause (i)*
6 *of paragraph (2)(B) at any time before the expiration*
7 *of the 90-day period specified in clause (i) of such*
8 *paragraph; or*

9 *“(ii) commence a civil action described in clause*
10 *(ii) of such paragraph before the expiration of the ap-*
11 *plicable 90-day period specified in clause (ii) of such*
12 *paragraph.*

13 *“(B) If such Federal employee files a written request*
14 *under subclause (II) or (III) of paragraph (2)(B)(i) and*
15 *in accordance with subparagraph (A), the Commission shall*
16 *transmit the complaint, in the 10-day period beginning 90*
17 *days after the complaint is filed under subsection (c), to*
18 *the appropriate agency for determination.*

19 *“(f)(1) If such Federal employee files a written request*
20 *under subsection (e)(2)(B)(i)(I) and in accordance with*
21 *subsection (e)(3)(A) with the Commission for a determina-*
22 *tion under this subsection of a claim with respect to which*
23 *notice is required by subsection (e)(2), then the Commission*
24 *shall transmit a copy of such request to the respondent and,*
25 *not later than 10 days after receiving such request, shall*

1 *appoint an administrative judge of the Commission to de-*
2 *termine such claim. If such request includes a request for*
3 *a stay described in paragraph (3)(A), then the Commission*
4 *shall appoint an administrative judge immediately after re-*
5 *ceiving such request.*

6 “(2) Not later than 5 days after receiving a copy of
7 a request under subsection (e)(2)(B)(i), the respondent shall
8 transmit—

9 “(A) to the Commission if such request is for a
10 determination under this subsection; or

11 “(B) to the Merit Systems Protection Board if
12 such request is for a determination be made under the
13 procedures specified in section 7702(a)(2)(A) of title
14 5, United States Code;

15 a copy of all documents and information collected by the
16 respondent under subsection (d) with respect to such claim.

17 “(3)(A)(i) If the administrative judge determines there
18 are reasonable grounds to believe that to carry out the pur-
19 poses of this section it is necessary to stay a personnel ac-
20 tion by the respondent against the aggrieved Federal em-
21 ployee, the administrative judge may request any member
22 of the Commission to issue a stay against such personnel
23 action for 15 days.

24 “(ii) A stay requested under clause (i) shall take effect
25 on the earlier of—

1 “(I) the order of such member; and

2 “(II) the fourth day (excluding Saturday, Sun-
3 day, and any legal public holiday) following the date
4 on which such stay is requested unless the request is
5 denied before the expiration of the 15-day period be-
6 ginning on such fourth day.

7 “(B) The administrative judge may request any mem-
8 ber of the Commission to extend, for a period not to exceed
9 30 days, a stay issued under subparagraph (A).

10 “(C) The administrative judge may request the Com-
11 mission to extend such stay for any period the Commission
12 considers to be appropriate beyond the period in effect
13 under subparagraph (A) or (B).

14 “(D)(i) Members of the Commission shall have author-
15 ity to issue and extend a stay for the periods referred to
16 in subparagraphs (A) and (B). The Commission shall have
17 authority to extend a stay in accordance with subparagraph
18 (C) for any period.

19 “(ii) The respondent shall comply with a stay in effect
20 under this paragraph.

21 “(4) The administrative judge shall determine whether
22 the documents and information received under paragraph
23 (2) comply with subsection (d) and are complete and accu-
24 rate. If the administrative judge finds that the respondent
25 has failed to produce the documents and information nec-

1 *essary to comply with such subsection, the administrative*
2 *judge shall, in the absence of good cause shown by the re-*
3 *spondent, impose any of the sanctions specified in para-*
4 *graph (6)(C) and shall require the respondent—*

5 *“(A) to obtain any additional documents and in-*
6 *formation necessary to comply with such subsection;*
7 *and*

8 *“(B) to correct any inaccuracy in the documents*
9 *and information so received.*

10 *“(5)(A) After examining the documents and informa-*
11 *tion received under paragraph (4), the administrative judge*
12 *shall issue an order dismissing—*

13 *“(i) any frivolous claim alleged in the com-*
14 *plaint; and*

15 *“(ii) the complaint if it fails to state a*
16 *nonfrivolous claim for which relief may be granted*
17 *under this section.*

18 *“(B)(i) If a claim or the complaint is dismissed under*
19 *subparagraph (A), the administrative judge shall give for-*
20 *mal written notice to the aggrieved Federal employee that*
21 *such Federal employee may, before the expiration of the 90-*
22 *day period beginning on the date such Federal employee*
23 *receives such notice—*

24 *“(I) file with the Commission a written request*
25 *for appellate review of such order; or*

1 “(II) commence a civil action in an appropriate
2 district court of the United States for de novo review
3 of such claim or the complaint.

4 “(ii) Such Federal employee may commence such civil
5 action in the 90-day period specified in clause (i).

6 “(6)(A)(i) If the complaint is not dismissed under
7 paragraph (5)(A), the administrative judge shall make a
8 determination, after an opportunity for a hearing, on the
9 merits of each claim that is not dismissed under such para-
10 graph. The administrative judge shall make a determina-
11 tion on the merits of any other nonfrivolous claim under
12 this title, and on any action such Federal employee may
13 appeal to the Merit Systems Protection Board, reasonably
14 expected to arise from the facts on which the complaint is
15 based.

16 “(ii) On the request of the aggrieved Federal employee,
17 the administrative judge shall—

18 “(I) determine whether the administrative pro-
19 ceeding with respect to such claim may be main-
20 tained as a class proceeding; and

21 “(II) if the administrative proceeding may be so
22 maintained, shall describe those whom the adminis-
23 trative judge finds to be members of such class.

24 “(B) With respect to such claim, a party may conduct
25 discovery by such means as may be available in a civil ac-

1 *tion to the extent deemed appropriate by the administrative*
2 *judge.*

3 “(C) *If the aggrieved Federal employee or the respond-*
4 *ent fails without good cause to respond fully and in a time-*
5 *ly fashion to a request made or approved by the administra-*
6 *tive judge for information or the attendance of a witness,*
7 *and if such information or such witness is solely in the con-*
8 *trol of the party who so fails to respond, then the adminis-*
9 *trative judge shall—*

10 “(i) *draw an adverse inference that the requested*
11 *information, or the testimony of the requested witness,*
12 *would have reflected unfavorably on the party who so*
13 *fails to respond;*

14 “(ii) *consider the matters to which such informa-*
15 *tion or such testimony pertains to be established in*
16 *favor of the opposing party;*

17 “(iii) *exclude other evidence offered by the party*
18 *who so fails to respond;*

19 “(iv) *grant full or partial relief, including—*

20 “(I) *relief of the kinds described in section*
21 *706(g); and*

22 “(II) *compensatory damages for unlawful*
23 *intentional discrimination (not an employment*
24 *practice that is unlawful because of its disparate*
25 *impact) prohibited under this section, subject to*

1 *the limitations specified in section 1977A(b)(3)*
2 *of the Revised Statutes of the United States;*
3 *to the aggrieved Federal employee; or*

4 “(v) *take such other action the administrative*
5 *judge considers to be appropriate.*

6 “(D) *In a hearing on a claim, the administrative judge*
7 *shall—*

8 “(i) *limit attendance to persons who have a di-*
9 *rect connection with such claim;*

10 “(ii) *bring out pertinent facts and relevant em-*
11 *ployment practices and policies, and ensure that the*
12 *record is developed for a full and fair determination*
13 *of such claim, but—*

14 “(I) *exclude irrelevant or unduly repetitious*
15 *information; and*

16 “(II) *apply the Federal Rules of Evidence*
17 *equitably;*

18 “(iii) *permit all parties to examine and cross ex-*
19 *amine witnesses; and*

20 “(iv) *require that testimony be given under oath*
21 *or affirmation.*

22 “(E) *At the request of any party or the administrative*
23 *judge, a transcript of all or part of such hearing shall be*
24 *provided in a timely manner and simultaneously to the*

1 *parties and the Commission. The respondent shall bear the*
2 *cost of providing such transcript.*

3 *“(F) The administrative judge shall have authority—*

4 *“(i) to administer oaths and affirmations;*

5 *“(ii) to regulate the course of hearings;*

6 *“(iii) to rule on offers of proof and receive evi-*
7 *dence;*

8 *“(iv) to issue subpoenas to compel—*

9 *“(I) the production of documents or infor-*
10 *mation by the entity of the Federal Government*
11 *in which discrimination is alleged to have oc-*
12 *curred; and*

13 *“(II) the attendance of witnesses who are*
14 *Federal officers or employees of such entity;*

15 *“(v) to request the Commission to issue subpoe-*
16 *nas to compel the production of documents or infor-*
17 *mation by any other entity of the Federal Govern-*
18 *ment and the attendance of other witnesses, except*
19 *that any witness who is not an officer or employee of*
20 *an entity of the Federal Government may be com-*
21 *pelled only to attend any place—*

22 *“(I) less than 100 miles from the place*
23 *where such witness resides, is employed, trans-*
24 *acts business in person, or is served; or*

1 “(II) at such other convenient place as is
2 fixed by the administrative judge;
3 and shall be paid fees and allowances, by the party
4 that requests the subpoena, to the same extent that
5 fees and allowances are paid to witnesses under chap-
6 ter 119 of title 28, United States Code, as amended
7 from time to time;

8 “(vi) to exclude witnesses whose testimony would
9 be unduly repetitious;

10 “(vii) to exclude any person from a hearing for
11 contumacious conduct, or for misbehavior, that ob-
12 structs such hearing; and

13 “(viii) to grant full or partial relief, including—

14 “(I) relief of the kinds described in section
15 706(g); and

16 “(II) compensatory damages for unlawful
17 intentional discrimination (not an employment
18 practice that is unlawful because of its disparate
19 impact) prohibited under this section, subject to
20 the limitations specified in section 1977A(b)(3)
21 of the Revised Statutes of the United States.

22 “(G) The administrative judge and the Commission
23 shall have authority to award to a prevailing party (other
24 than an entity of the Federal Government)—

1 “(i) a reasonable attorney’s fee (including expert
2 fees) and costs as a court has authority to award
3 under section 706(k), as amended from time to time;
4 and

5 “(ii) the same interest to compensate for delay in
6 payment as in cases involving nonpublic parties.

7 “(H) The Commission shall have authority to issue
8 subpoenas described in subparagraph (F)(v).

9 “(I) In the case of contumacy or failure to obey a sub-
10 poena issued under subparagraph (F) or (H), the United
11 States district court for the judicial district in which the
12 person to whom the subpoena is addressed resides or is
13 served may issue an order requiring such person to appear
14 at any designated place to testify or to produce documen-
15 tary or other evidence.

16 “(7)(A) Except as provided in subparagraph (B), the
17 administrative judge shall issue a written order making the
18 determination required by paragraph (6)(A), and granting
19 or denying relief, not later than—

20 “(i)(I) 300 days after the complaint containing
21 such claim is filed by or on behalf of a Federal em-
22 ployee if such complaint is filed in the 1-year period
23 beginning on the effective date of this subsection;

1 “(II) except as provided in subclause (I), 210
2 days after the complaint containing such claim is
3 filed by or on behalf of a Federal employee; or

4 “(ii) 2 years and 30 days after the complaint
5 containing such claim is filed on behalf of a class of
6 Federal employees;

7 except that these time periods shall not begin running until
8 30 days after the administrative judge is assigned to make
9 a determination under paragraph (6)(A)(i) in the case if
10 the administrative judge certifies, in writing, that such 30-
11 day period is needed to secure additional documents or in-
12 formation from the respondent to have a complete adminis-
13 trative record.

14 “(B) The administrative judge shall issue such order
15 not later than 30 days after the applicable period specified
16 in subparagraph (A) if the administrative judge certifies
17 in writing, before the expiration of such applicable period—

18 “(i) that such 30-day period is necessary to
19 make such determination; and

20 “(ii) the particular and unusual circumstances
21 that prevent the administrative judge from complying
22 with the applicable period specified in subparagraph
23 (A).

24 “(C) The administrative judge may apply to the Com-
25 mission to extend any period applicable under subpara-

1 *graph (A) or (B) if manifest injustice would occur in the*
2 *absence of such an extension.*

3 *“(D) The Commission—*

4 *“(i) may not grant such extension; or*

5 *“(ii) shall terminate such extension;*

6 *if the aggrieved Federal employee shows that such extension*
7 *would prejudice a claim of, or otherwise harm, such Federal*
8 *employee.*

9 *“(E) In addition to findings of fact and conclusions*
10 *of law, such order shall include formal written notice to*
11 *each party that before the expiration of the 90-day period*
12 *beginning on the date such party receives such order—*

13 *“(i) the aggrieved Federal employee may com-*
14 *mence a civil action in an appropriate district court*
15 *of the United States for de novo review of a claim*
16 *with respect to which such order is issued; and*

17 *“(ii) unless and until a civil action is com-*
18 *menced in such 90-day period under clause (i) with*
19 *respect to such claim, any party may file with the*
20 *Commission a written request for appellate review of*
21 *the determination made, and relief granted or denied,*
22 *in such order with respect to such claim.*

23 *“(F) Such Federal employee may commence such civil*
24 *action at any time—*

1 “(i) after the expiration of the applicable period
2 specified in subparagraph (A) or (B); and

3 “(ii) before the expiration of the 90-day period
4 beginning on the date such Federal employee receives
5 an order described in subparagraph (A).

6 “(G) If such order applies to more than one claim and
7 if such employee neither—

8 “(i) commences a civil action in accordance with
9 subparagraph (E)(i); nor

10 “(ii) requests appellate review in accordance
11 with subparagraph (E)(ii);

12 with respect to a particular claim, then the determination
13 made, and relief granted, in such order with respect to such
14 particular claim shall be enforceable immediately.

15 “(g)(1) If a party files timely a written request in ac-
16 cordance with subsection (f)(5)(B)(i) or (f)(7)(E)(ii) with
17 the Commission for appellate review of the determination
18 made, and relief granted or denied, with respect to a claim
19 in such order, then the Commission shall immediately
20 transmit a copy of such request to the other parties involved
21 and to the administrative judge who issued such order.

22 “(2) Not later than 7 days after receiving a copy of
23 such request, the administrative judge shall transmit to the
24 Commission the record of the proceeding on which such

1 *order is based, including all documents and information*
2 *collected by the respondent under subsection (d).*

3 “(3)(A) *After allowing the parties to file briefs with*
4 *respect to such determination, the Commission shall issue*
5 *an order with respect to such claim affirming, reversing,*
6 *or modifying the applicable provisions of the order of the*
7 *administrative judge not later than—*

8 “(i) *150 days after receiving such request; or*

9 “(ii) *30 days after such 150-day period if the*
10 *Commission certifies in writing, before the expiration*
11 *of such 150-day period—*

12 “(I) *that such 30-day period is necessary to*
13 *review such claim; and*

14 “(II) *the particular and unusual cir-*
15 *cumstances that prevent the Commission from*
16 *complying with clause (i).*

17 “(B) *The Commission shall affirm the determination*
18 *made, and relief granted or denied, by the administrative*
19 *judge with respect to such claim if such determination and*
20 *such relief are supported by substantial evidence in the*
21 *record taken as a whole and are otherwise in accordance*
22 *with law. The findings of fact of the administrative judge*
23 *shall be conclusive unless the Commission determines that*
24 *they are clearly erroneous.*

1 “(C) In addition to findings of fact and conclusions
2 of law, the Commission shall include in its order formal
3 written notice to the aggrieved Federal employee that, before
4 the expiration of the 90-day period beginning on the date
5 such Federal employee receives such order, such Federal em-
6 ployee may commence a civil action in an appropriate dis-
7 trict court of the United States for de novo review of a claim
8 with respect to which such order is issued.

9 “(D) Such Federal employee may commence such civil
10 action at any time—

11 “(i) after the expiration of the applicable period
12 specified in subparagraph (A); and

13 “(ii) before the expiration of the 90-day period
14 specified in subparagraph (C).

15 “(h)(1) In addition to the periods authorized by sub-
16 sections (f)(7)(F) and (g)(3)(D)—

17 “(A)(i) during the period beginning 390 days
18 after an aggrieved Federal employee timely requests
19 an administrative determination under subsection (f)
20 with respect to a claim and ending on the date the
21 administrative judge issues under such subsection an
22 order that is subject to subsection (f)(7)(A)(i)(I) with
23 respect to such claim; and

24 “(ii) during the period beginning 300 days after
25 an aggrieved Federal employee timely requests an ad-

1 *ministrative determination under subsection (f) with*
2 *respect to a claim and ending on the date the admin-*
3 *istrative judge issues under such subsection an order*
4 *that is subject to subsection (f)(7)(A)(i)(II) with re-*
5 *spect to such claim;*

6 *“(B) during the period beginning 2 years and*
7 *120 days after an aggrieved Federal employee timely*
8 *requests an administrative determination under sub-*
9 *section (f) with respect to a claim and ending on the*
10 *date the administrative judge issues under such sub-*
11 *section an order that is subject to subsection*
12 *(f)(7)(A)(ii) with respect to such claim; and*

13 *“(C) during the period beginning 210 days after*
14 *such Federal employee timely requests appellate re-*
15 *view under subsection (g) of such determination with*
16 *respect to such claim and ending on the date the*
17 *Commission issues an order under such subsection*
18 *with respect to such claim;*

19 *such Federal employee may commence a civil action in an*
20 *appropriate district court of the United States for de novo*
21 *review of such claim.*

22 *“(2) Whenever a civil action is commenced timely and*
23 *otherwise in accordance with this section to determine the*
24 *merits of a claim arising under this section, the jurisdiction*
25 *of the administrative judge or the Commission (as the case*

1 *may be) to determine the merits of such claim shall termi-*
2 *nate.*

3 “(i) A Federal employee who prevails on a claim aris-
4 *ing under this section, or the Commission, may bring a*
5 *civil action in an appropriate district court of the United*
6 *States to enforce—*

7 “(1) the provisions of a settlement agreement ap-
8 *plicable to such claim;*

9 “(2) the provisions of an order issued by an ad-
10 *ministrative judge under subsection (f)(7)(A) applica-*
11 *ble to such claim if—*

12 “(A) a request is not filed timely under sub-
13 *section (g)(1) for appellate review by the Com-*
14 *mission; and*

15 “(B) a civil action is not commenced timely
16 *under subsection (g)(3)(D) for de novo review;*
17 *of such claim; or*

18 “(3) the provisions of an order issued by the
19 *Commission under subsection (g)(3)(A) applicable to*
20 *such claim if a civil action is not commenced timely*
21 *under subsection (g)(3)(D) for de novo review of such*
22 *claim.*

23 “(j) Any amount awarded under this section (includ-
24 *ing fees, costs, and interest awarded under subsection*
25 *(f)(6)(G)), or under title 28 of the United States Code, with*

1 *respect to a violation of subsection (a), shall be paid by*
2 *the entity of the Federal Government that violated such sub-*
3 *section from any funds made available to such entity by*
4 *appropriation or otherwise.*

5 “(k)(1) *An entity of the Federal Government against*
6 *which a claim of discrimination is alleged in a complaint*
7 *filed in an administrative proceeding or a civil action*
8 *under this section shall grant the aggrieved Federal em-*
9 *ployee paid administrative leave if otherwise on duty, for*
10 *time expended in accordance with regulations issued by the*
11 *Commission to carry out this subsection, except that such*
12 *leave shall include reasonable time for—*

13 “(A) *preparation of a complaint based on such*
14 *allegation;*

15 “(B) *responding to requests made by the Com-*
16 *mission or the respondent for information; and*

17 “(C) *attendance at such proceeding or action.*

18 “(2) *Except as provided in paragraph (1), an entity*
19 *of the Federal Government shall grant a Federal employee*
20 *official leave or paid administrative leave to participate for*
21 *the benefit of a claimant in an administrative proceeding*
22 *or civil action commenced under this section to the same*
23 *extent and under such circumstances as such entity would*
24 *grant such employee official leave or paid administrative*
25 *leave to participate for the benefit of a Federal entity in*

1 *an administrative proceeding or civil action commenced*
2 *under this section against such entity.*

3 *“(l)(1) In enforcing compliance with an order issued*
4 *by an administrative judge or the Commission, the Com-*
5 *mission may make a written determination that—*

6 *“(A) any officer or employee of the agency, de-*
7 *partment, or unit charged with complying with such*
8 *order, or*

9 *“(B) any officer or employee of the United States*
10 *determined to be responsible for the failure of the*
11 *agency, department, or unit to comply with such*
12 *order,*

13 *who is not an officer or employee appointed by the Presi-*
14 *dent by and with the advice and consent of the Senate, shall*
15 *not be entitled to receive payment for service as an officer*
16 *or employee for the period during which such order has not*
17 *been complied with. The Commission shall certify to the*
18 *Comptroller General of the United States that a determina-*
19 *tion under this paragraph has been made, and no payment*
20 *shall be made out of the Treasury of the United States for*
21 *any service specified in such determination.*

22 *“(2) In enforcing compliance with such order with re-*
23 *spect to any officer or employee described in subparagraph*
24 *(A) or (B) of paragraph (1) who is an officer or employee*
25 *appointed by the President by and with the advice and con-*

1 *sent of the Senate, the Commission may notify the President*
2 *that such officer or employee has failed to obey such order.*

3 “(m) *If with respect to the merits of a claim of inten-*
4 *tional discrimination (other than an employment practice*
5 *that is unlawful because of its disparate impact) prohibited*
6 *by this section, a Federal employee prevails in a proceeding*
7 *under subsection (f) or a civil action commenced under this*
8 *section, the finder of fact in such proceeding shall identify*
9 *each individual believed to have engaged in conduct that*
10 *is the basis of such discrimination. Not later than 15 days*
11 *after issuing an order finding liability under this section,*
12 *the administrative judge or the district court involved shall*
13 *notify the Office of Special Counsel of the identity of such*
14 *individual and the fact that such individual is believed to*
15 *have engaged in conduct that is the basis of liability found*
16 *on such claim in such proceeding or action.*

17 “(n) *This section, as in effect immediately before the*
18 *effective date of the Federal Employee Fairness Act of 1994,*
19 *shall apply with respect to employment in the Library of*
20 *Congress.”.*

1 **SEC. 102. AMENDMENTS TO THE AGE DISCRIMINATION IN**
 2 **EMPLOYMENT ACT AND THE REHABILITA-**
 3 **TION ACT OF 1973.**

4 (a) *ENFORCEMENT BY EEOC.*—(1) *Section 15 of the*
 5 *Age Discrimination in Employment Act of 1967 (29 U.S.C.*
 6 *633a) is amended—*

7 (A) *by striking subsections (c) and (d),*

8 (B) *by inserting after subsection (b) the follow-*
 9 *ing:*

10 “(c)(1)(A) *Except as provided in subparagraph (B),*
 11 *any individual aggrieved by a violation of subsection (a)*
 12 *of this section may file a complaint with the Commission*
 13 *in accordance with section 717 of the Civil Rights Act of*
 14 *1964.*

15 “(B) *Subsections (c) and (d) of this section, as in effect*
 16 *immediately before the effective date of the Federal Em-*
 17 *ployee Fairness Act of 1994, shall apply with respect to em-*
 18 *ployment in the Library of Congress.*

19 “(2) *Except as provided in paragraph (1)(B) and sub-*
 20 *section (d), such section 717 shall apply to a violation al-*
 21 *leged in a complaint filed under paragraph (1) in the same*
 22 *manner as such section applies to a claim arising under*
 23 *section 717 of such Act.*

24 “(d)(1) *If an individual aggrieved by a violation of*
 25 *this section does not file a complaint under subsection*
 26 *(c)(1), such individual may commence a civil action—*

1 “(A) not less than 30 days after filing with the
2 Commission a notice of intent to commence such ac-
3 tion; and

4 “(B) not more than 2 years after the alleged vio-
5 lation of this section occurs;

6 in an appropriate district court of the United States for
7 de novo review of such violation.

8 “(2) On receiving such notice, the Commission shall—

9 “(A) promptly notify all persons named in such
10 notice as prospective defendants in such action; and

11 “(B) take any appropriate action to ensure the
12 elimination of any unlawful practice.

13 “(3) Section 717(o) of the Civil Rights Act of 1964 (42
14 U.S.C. 2000e–16(o)) shall apply to civil actions commenced
15 under this subsection in the same manner as such section
16 applies to civil actions commenced under section 717 of the
17 Civil Rights Act of 1964.”,

18 (C) in subsection (f)—

19 (i) by inserting “(1)” after “(f)”,

20 (ii) by striking “section 12(b)” and insert-
21 ing “sections 12(b) and 4(d)”, and

22 (iii) by adding at the end the following:

23 “(2)(A) Subject to subparagraph (B), an unlawful per-
24 sonnel action of the kind described in section 4(d) is estab-
25 lished under subsection (a) if an employee or applicant for

1 *employment demonstrates that his opposing any practice*
2 *made an unlawful employment practice by subsection (a),*
3 *his making a charge, testifying, assisting, or participating*
4 *in any manner in an investigation, proceeding, or hearing*
5 *under this section, or his communicating with the Congress*
6 *regarding discrimination in violation of subsection (a) was*
7 *a contributing factor in an adverse personnel action that*
8 *was taken or is to be taken against such employee or appli-*
9 *cant.*

10 *“(B) Relief under this section may not be granted if*
11 *the respondent demonstrates by clear and convincing evi-*
12 *dence that it would have taken the same personnel action*
13 *in the absence of such disclosure.”.*

14 *(2) Section 505 of the Rehabilitation Act of 1973 (29*
15 *U.S.C. 794a) is amended—*

16 *(A) in subsection (a)(1)—*

17 *(i) by inserting “(A)” after “(a)(1)”,*

18 *(ii) by striking “706(k)” and inserting*
19 *“706(j)”,*

20 *(iii) by striking “through (k)” and insert-*
21 *ing “through (j)”, and*

22 *(iv) by adding at the end the following:*

23 *“(B) The first sentence of this paragraph, as in effect*
24 *immediately before the effective date of the Federal Em-*

1 *ployee Fairness Act of 1994, shall apply with respect to em-*
 2 *ployment in the Library of Congress.”, and*

3 *(B) in subsection (b) by striking “In” and in-*
 4 *serting “Except as provided in subsection (a)(1), in”.*

5 *(b) OPPORTUNITY TO COMMENCE CIVIL ACTION.—If*
 6 *a complaint filed under section 15 of the Age Discrimina-*
 7 *tion in Employment Act of 1967 (29 U.S.C. 633a), or sec-*
 8 *tion 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791)),*
 9 *with the Equal Employment Opportunity Commission is*
 10 *pending in the period beginning on the date of the enact-*
 11 *ment of this Act and ending on December 31, 1995, the in-*
 12 *dividual who filed such complaint may commence a civil*
 13 *action under such section not later than June 30, 1996.*

14 **SEC. 103. AMENDMENTS TO TITLE 5 OF THE UNITED STATES**
 15 **CODE.**

16 *(a) GRIEVANCE PROCEDURES.—Section 7121 of title*
 17 *5, United States Code, is amended—*

18 *(1) in subsection (a)(1) by inserting “adminis-*
 19 *trative” after “exclusive”, and*

20 *(2) in subsection (d)—*

21 *(A) by inserting “(1)” after “(d)”,*

22 *(B) in the first sentence by inserting “, in*
 23 *the discretion of the aggrieved employee,” after*
 24 *“may”, and*

1 (C) in the last sentence by striking “Selec-
 2 tion” and all that follows through “any other”,
 3 and inserting the following:

4 “(2) An employee may commence, not later than 120
 5 days after a final decision, a civil action in an appropriate
 6 district court of the United States for de novo review of
 7 a”.

8 (b) ACTIONS INVOLVING DISCRIMINATION.—Section
 9 7702 of title 5, United States Code, is amended to read as
 10 follows:

11 **“§ 7702. Actions involving discrimination**

12 “(a)(1) Notwithstanding any other provision of law,
 13 in the case of any employee or applicant for employment
 14 who—

15 “(A) is affected by—

16 “(i) an action which the employee or appli-
 17 cant may appeal to the Merit Systems Protection
 18 Board, or

19 “(ii) an action, not described in clause
 20 (i)—

21 “(I) on the part the Equal Employ-
 22 ment Opportunity Commission, and

23 “(II) with respect to which the em-
 24 ployee or applicant makes an election under

1 *section 717(e)(2)(B)(i)(II) of the Civil*
2 *Rights Act of 1964, and*

3 *“(B) alleges that a basis for the action was dis-*
4 *crimination prohibited by—*

5 *“(i) section 717 of the Civil Rights Act of*
6 *1964 (42 U.S.C. 2000a–16),*

7 *“(ii) section 6(d) of the Fair Labor Stand-*
8 *ards Act of 1938 (29 U.S.C. 206(d)),*

9 *“(iii) section 501 of the Rehabilitation Act*
10 *of 1973 (29 U.S.C. 791),*

11 *“(iv) sections 12 and 15 of the Age Dis-*
12 *crimination in Employment Act of 1967 (29*
13 *U.S.C. 631, 633a), or*

14 *“(v) any rule, regulation, or policy directive*
15 *prescribed under any provision of law described*
16 *in clauses (i) through (iv) of this subparagraph,*
17 *the employee or applicant may raise the action as provided*
18 *in paragraph (2).*

19 *“(2) For purposes of paragraph (1), the employee shall*
20 *raise the action by filing a complaint with the Equal Em-*
21 *ployment Opportunity Commission in accordance with sec-*
22 *tion 717 of the Civil Rights Act of 1964 and shall make*
23 *a request under section 717(e)(2)(B)(i) selecting the proce-*
24 *dures specified in one of the following subparagraphs:*

1 “(A) *The administrative and judicial procedures*
2 *provided under sections 7701 and 7703.*

3 “(B) *The administrative and judicial procedures*
4 *provided under section 7121.*

5 “(C) *The administrative and judicial procedures*
6 *provided under section 717 of the Civil Rights Act of*
7 *1964.*

8 “(3) *The agency (including the Board and the Equal*
9 *Employment Opportunity Commission) that carries out*
10 *such procedures shall apply the substantive law that is ap-*
11 *plied by the agency that administers the particular law re-*
12 *ferred to in subsection (a)(1) that prohibits the conduct al-*
13 *leged to be the basis of the action referred to in subsection*
14 *(a)(1)(A).*

15 “(b) *If—*

16 “(1) *an employee elects the procedures specified*
17 *in subsection (a)(2)(C), and*

18 “(2) *the Equal Employment Opportunity Com-*
19 *mission dismisses under section 717(f)(5)(A) of the*
20 *Civil Rights Act of 1964 a claim that is based on the*
21 *action raised by the employee,*

22 *then the employee shall have 20 days in which to raise the*
23 *action under the procedures specified in subparagraph (A)*
24 *or (B) of subsection (a)(2), except that no allegation of a*

1 *kind described in subsection (a)(1)(B) may be raised under*
 2 *this subsection.*

3 “(c) *If at any time after the 120th day following the*
 4 *receipt under section 717(e)(3)(B) of the Civil Rights Act*
 5 *of 1964 of a complaint as a result of an election made under*
 6 *section 717(e)(2)(B)(i) of the Civil Rights Act of 1964 to*
 7 *raise an action under the procedures specified in subsection*
 8 *(a)(2)(A) there is no judicially reviewable action, an em-*
 9 *ployee shall be entitled to file, not later than 240 days after*
 10 *making such election, a civil action in an appropriate dis-*
 11 *trict court of the United States for de novo review of the*
 12 *action raised under subsection (a).*

13 “(d) *Nothing in this section shall be construed to affect*
 14 *the right to trial de novo under any provision of law de-*
 15 *scribed in subsection (a)(1) after a judicially reviewable ac-*
 16 *tion.*”.

17 (c) *DISCIPLINARY ACTION.*—(1) *Section 1214 of title*
 18 *5, United States Code, is amended by adding at the end*
 19 *the following:*

20 “(g)(1) *Whenever the Office of Special Counsel receives*
 21 *any notification, in accordance with section 717(m) of the*
 22 *Civil Rights Act of 1964, with respect to a claim arising*
 23 *under section 717(a) of the Civil Rights Act of 1964, section*
 24 *15(a) of the Age Discrimination in Employment Act of*
 25 *1967, or section 501 of the Rehabilitation Act of 1973, the*

1 *Special Counsel shall investigate the matter to the extent*
2 *necessary to determine whether there are reasonable grounds*
3 *to believe that a prohibited personnel practice described in*
4 *section 2302(b)(1) has occurred and, if so, shall seek the*
5 *appropriate disciplinary action under section 1215.*

6 “(2) *A determination under this subsection shall be*
7 *made not later than 180 days after the appropriate date*
8 *under paragraph (3) for the last applicable event described*
9 *in such paragraph.*

10 “(3)(A) *With respect to a claim—*

11 “(i) *to which an order issued by an administra-*
12 *tive judge of the Equal Employment Opportunity*
13 *Commission applies, and*

14 “(ii) *with respect to which the aggrieved em-*
15 *ployee neither—*

16 “(I) *commences a civil action in accordance*
17 *with section 717(f)(7)(E)(i) of the Civil Rights*
18 *Act of 1964, nor*

19 “(II) *requests appellate review in accord-*
20 *ance with section 717(f)(7)(E)(ii) of the Civil*
21 *Rights Act of 1964,*

22 *the appropriate date is the date on which the Office of Spe-*
23 *cial Counsel receives notification (referred to in paragraph*
24 *(1)) from the administrative judge.*

25 “(B) *With respect to a claim—*

1 “(i) to which an order issued by the Equal Em-
2 ployment Opportunity Commission applies, and

3 “(ii) with respect to which the aggrieved em-
4 ployee does not commence a civil action in accordance
5 with section 717(g)(3)(D),

6 the appropriate date is the date on which the Office of Spe-
7 cial Counsel receives notification (referred to in paragraph
8 (1)) from the Commission.

9 “(C) With respect to a claim to which a final judgment
10 issued by a court of the United States applies, the appro-
11 priate date is the date on which the Office of Special Coun-
12 sel receives notification (referred to in paragraph (1)) from
13 such court.

14 “(4) For the purpose of this subsection—

15 “(A) the term ‘order’ means an order issued on
16 the merits;

17 “(B) the term ‘judgment’ means a judgment is-
18 sued on the merits; and

19 “(C) the term ‘final judgment’ means a judgment
20 that is either—

21 “(i) not reviewed by any other court that
22 has authority to review such judgment; or

23 “(ii) not reviewable by any other court.”.

24 (2) Section 1218 of title 5, United States Code, is
25 amended—

1 (A) by inserting “(a)” before the first sentence;

2 and

3 (B) by adding at the end the following:

4 “(b) Any statistical or other information provided
5 under the first sentence of subsection (a) shall specify the
6 extent to which such information relates to any matter re-
7 ferred to in section 1214(g).”.

8 (d) *RECORDKEEPING.*—(1) Chapter 23 of title 5,
9 United States Code, is amended by adding at the end the
10 following:

11 **“§ 2306. Federal personnel records**

12 “(a) For the purpose of this section—

13 “(1) the term ‘personnel action’ has the meaning
14 given such term in section 2302(a)(2)(A);

15 “(2) the term ‘record’ has the meaning given
16 such term in section 552a(a)(4); and

17 “(3) the term ‘employee’ means—

18 “(A) an employee as defined by section
19 2105; and

20 “(B) an employee of the United States Post-
21 al Service or the Postal Rate Commission;

22 but does not include any employee with respect to
23 whom section 117, or title III (excluding section 320),
24 of the Civil Rights Act of 1991 applies.

1 “(b) Records relating to any personnel action taken
2 with respect to an employee shall be maintained by the em-
3 ploying authority for at least the greater of—

4 “(1) 270 days after the effective date of the per-
5 sonnel action to which they relate; or

6 “(2) the period of time otherwise required under
7 applicable provisions of law, rule, or regulation, if
8 any.

9 “(c) The Office of Personnel Management shall pre-
10 scribe regulations for the implementation of this section by
11 an Executive agency.”.

12 (2) The table of sections for chapter 23 of title 5,
13 United States Code, is amended by adding at the end the
14 following:

“2306. Federal personnel records.”.

15 (e) CONFORMING AMENDMENTS.—Section 7703(b) of
16 title 5, United States Code, is amended—

17 (1) in paragraph (1) by striking “(1) Except as
18 provided in paragraph (2) of this subsection, a” and
19 inserting “A”, and

20 (2) by striking paragraph (2).

21 (f) RIGHT TO INTERVENE.—Section 1212(c)(2) of title
22 5, United States Code, is amended—

23 (1) by striking “(2)” and inserting “(2)(A)”;
24 and

25 (2) by adding at the end the following:

1 “(B) Consent under subparagraph (A) shall not be re-
2 quired, in the case of an appeal from an action, if—

3 “(i) section 7513(d) is the provision making the
4 action appealable to the Board;

5 “(ii) the appeal is brought by an individual with
6 respect to whom notification has been received by the
7 Office of Special Counsel under section 717(m) of the
8 Civil Rights Act of 1964; and

9 “(iii) 1 of the grounds for the action being ap-
10 pealed is discrimination of a type described in section
11 2302(b)(1).”.

12 **SEC. 104. TECHNICAL AMENDMENTS.**

13 Section 717(b) of the Civil Rights Act of 1964 (42
14 U.S.C. 2000e–16(b)) is amended by striking “Civil Service
15 Commission” each place it appears and inserting “Com-
16 mission”.

17 **SEC. 105. ISSUANCE OF PROCEDURAL GUIDELINES AND NO-**
18 **TICE RULES.**

19 After providing notice in accordance with section
20 553(b) of title 5, United States Code, and not later than
21 1 year after the date of the enactment of this Act, the Equal
22 Employment Opportunity Commission shall issue—

23 (1) rules to assist entities of the Federal Govern-
24 ment to comply with section 717(d) of the Civil

1 *Rights Act of 1964, as added by section 101 of this*
2 *Act,*

3 *(2) rules establishing—*

4 *(A) a uniform written official notice to be*
5 *used to comply with section 717 of such Act, as*
6 *added by section 101 of this Act, and*

7 *(B) detailed requirements applicable to col-*
8 *lecting and preserving documents and informa-*
9 *tion under section 717(d), as added by section*
10 *101 of this Act, and*

11 *(3) guidelines describing in detail an alternative*
12 *dispute resolution process that may be used by enti-*
13 *ties of the Federal Government (as defined in section*
14 *701(p) of the Civil Rights Act of 1964 (7 U.S.C.*
15 *2000e(p)) consistent with the administrative process*
16 *applicable to claims under section 717 of such Act.*

17 **SEC. 106. ISSUANCE OF RULES REGARDING CLASSIFIED IN-**
18 **FORMATION.**

19 *(a) RULES REQUIRED.—The Equal Employment Op-*
20 *portunity Commission, in consultation with the Director*
21 *of Central Intelligence, the Secretary of Defense, and the*
22 *Director of the Information Security Oversight Office of the*
23 *General Services Administration, shall issue rules to ensure*
24 *the protection of classified information and national secu-*
25 *rity information in administrative proceedings under sec-*

tion 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16). Such rules shall include a requirement that complaints filed under section 717(c) of such Act that bear on classified information shall be handled only by administrative judges, and other commission personnel, who have appropriate security clearances.

(b) *DEFINITION.*—For purposes of subsection (a), the term “classified information” has the meaning given such term in section 6096(1) of the National Security Act of 1947 (50 U.S.C. 426(1)).

SEC. 107. RULES OF CONSTRUCTION.

Any reference in any law (other than title VII of the Civil Rights Act of 1964) to any provision of title VII of the Civil Rights Act of 1964 amended by this title shall be deemed to be a reference to such provision as amended by this title.

SEC. 108. SENSE OF THE CONGRESS.

It is the sense of the Congress that because the amendments made by this title—

(1) impose on the Equal Employment Opportunity Commission additional administrative responsibility in the processing of claims of Federal employees based on discrimination in employment,

(2) increase the financial burden on the Commission to carry out such responsibility, and

1 (3) *lessen the responsibility of Federal agencies*
 2 *in the processing of such claims,*
 3 *the amount appropriated to the Commission to carry out*
 4 *laws prohibiting discrimination in Federal employment*
 5 *should be increased to enable the Commission to carry out*
 6 *its additional responsibility.*

7 **SEC. 109. EFFECTIVE DATE; APPLICATION OF AMEND-**
 8 **MENTS.**

9 (a) *EFFECTIVE DATE.*—*Except as provided in sub-*
 10 *sections (b) and (c), this title and the amendments made*
 11 *by this title shall take effect on January 1, 1996.*

12 (b) *APPLICATION OF AMENDMENTS.*—*Except as pro-*
 13 *vided in section 107, the amendments made by this title*
 14 *(other than sections 102 and 103) shall apply only with*
 15 *respect to complaints filed under section 717 of the Civil*
 16 *Rights Act of 1964 (42 U.S.C. 2000e–16) on or after the*
 17 *effective date of this Act.*

18 (c) *SECTIONS 105 AND 106.*—*Sections 105 and 106*
 19 *shall take effect on the date of the enactment.*

20 **TITLE II—AGE DISCRIMINATION**

21 **SEC. 201. COVERAGE OF EMPLOYEES OF THE HOUSE OF**
 22 **REPRESENTATIVES.**

23 *The Age Discrimination in Employment Act of 1967*
 24 *(29 U.S.C. 621 et seq.) is amended—*

1 (1) by redesignating sections 16 and 17 as sec-
2 tions 17 and 18, respectively, and

3 (2) by inserting after section 15 the following:

4 “COVERAGE OF CERTAIN EMPLOYEES IN THE LEGISLATIVE
5 BRANCH OF THE FEDERAL GOVERNMENT

6 “SEC. 16. (a) For purposes of this section—

7 “(1) the term ‘employee’ means an individual
8 who is employed by, or who applies for employment
9 with, an employing authority;

10 “(2) the term ‘employing authority’ has the
11 meaning given it in the Fair Employment Practices
12 Resolution and also includes any agent of the employ-
13 ing authority and any Member who participates in
14 determining the terms and conditions applicable to
15 an employee’s employment and any agent of such
16 Member, but with respect to a position on the minor-
17 ity staff of a committee, such term does not include
18 the Chairman of such committee;

19 “(3) the term ‘Fair Employment Practices Reso-
20 lution’ means—

21 “(A) House Resolution 558 of the One Hun-
22 dredth Congress, as adopted October 4, 1988, and
23 incorporated into rule LI of the Rules of the
24 House of Representatives of the One Hundred
25 Third Congress; or

1 “(B) any other provision that continues in
2 effect the provisions of such resolution; and

3 “(4) the term ‘instrumentality of the Congress’
4 means a unit of the legislative branch (other than the
5 Congress) that does not have positions in the competi-
6 tive service and any agent of such unit.

7 “(b) Sections 4 and 7(f) shall apply to employees and
8 to employing authorities.

9 “(c)(1) The remedies and procedures under the Fair
10 Employment Practices Resolution shall apply with respect
11 to a violation of section 4 as such section is made applicable
12 by subsection (b).

13 “(2) Within 90 days of the exhaustion of all procedures
14 authorized under paragraph (1) or after 180 days after the
15 filing of a complaint in accordance with such procedures,
16 an employee may bring a civil action in the appropriate
17 United States district court against the employee’s employ-
18 ing authority. In any such action, the court may order such
19 relief, including damages, attorneys’ fees, and other costs,
20 as may be ordered by a court under section 7.

21 “(d) Section 4, as such section is made applicable by
22 subsection (b), does not prohibit the taking into consider-
23 ation of —

1 “(1) the domicile of an individual with respect
2 to a position under the clerk-hire allowance of the
3 House of Representatives; or

4 “(2) the political affiliation of an individual
5 with respect to a position under such clerk-hire allow-
6 ance or a position on the staff of a committee.

7 “(e) The Committee on House Administration of the
8 House of Representatives shall determine which account
9 shall be used for payments to an aggrieved employee under
10 this section.

11 “(f) Each employing authority shall post and keep
12 posted in conspicuous places on its premises a notice that
13 shall be prepared by the Office of Fair Employment Prac-
14 tices, setting forth such information as the Office considers
15 to be appropriate to carry out this section.

16 “(g) Subsection (c)(1) is enacted as an exercise of the
17 rulemaking power of the House of Representatives, with full
18 recognition of the right of the House of Representatives to
19 change its rules in the same manner, and to the same extent,
20 as in any other rule of the House of Representatives.

21 “(h)(1) Subject to paragraph (2), sections 4 and 7(f)
22 shall apply with respect to individuals who are employed
23 by, or who apply for employment with, an instrumentality
24 of the Congress.

1 “(2) The chief official of each instrumentality of the
2 Congress shall establish remedies and procedures to protect
3 the rights provided for in paragraph (1). Such remedies and
4 procedures shall apply exclusively with respect to such
5 rights and shall provide to such individual protection that
6 is equal to or greater than the protection provided under
7 this section to employees of an employing authority.

8 “(3) The chief official of each instrumentality of the
9 Congress shall submit to the Congress a report describing
10 the remedies and procedures it has established to comply
11 with paragraph (2).

12 “(4) Within 90 days of the exhaustion of all procedures
13 in effect under paragraph (2) or after 180 days after the
14 filing of a complaint in accordance with such procedures
15 (or, if no applicable procedures are in effect under para-
16 graph (2), within 180 days after the alleged violation), an
17 employee may bring a civil action in the appropriate Unit-
18 ed States district court against the employee’s instrumen-
19 tality. In any such action, the court may order such relief,
20 including damages, attorneys’ fees, and other costs as may
21 be ordered by a court under section 7.”.

1 ***TITLE III—TITLE VII OF THE***
 2 ***CIVIL RIGHTS ACT OF 1964***

3 ***SEC. 301. REFERENCE.***

4 *Whenever in this title an amendment or repeal is ex-*
 5 *pressed in terms of an amendment to, or repeal of, a section*
 6 *or other provision, the reference shall be considered to be*
 7 *made to a section or other provision of the Civil Rights*
 8 *Act of 1991.*

9 ***SEC. 302. APPLICATION TO CONGRESS.***

10 *(a) COVERAGE.—Section 117(a)(2)(A) (2 U.S.C.*
 11 *601(a)(2)(A)) is amended by adding at the end the follow-*
 12 *ing: “For purposes of this section, the term ‘employee’ also*
 13 *includes an individual who applies for employment and the*
 14 *term ‘employing authority’ also includes any agent of the*
 15 *employing authority and any Member who participates in*
 16 *determining the terms and conditions applicable to an em-*
 17 *ployee’s employment and any agent of such Member but*
 18 *with respect to a position on the minority staff of a commit-*
 19 *tee such term does not include the Chairman of such com-*
 20 *mittee.”.*

21 *(b) EMPLOYEE ACTIONS, PAYMENTS, CONSIDER-*
 22 *ATIONS, AND NOTICE.—*

23 *(1) AMENDMENT.—Section 117 (2 U.S.C. 601) is*
 24 *amended in subsection (b)(4)—*

1 (A) by inserting before the period the follow-
2 ing: “and includes any agent of any of the fore-
3 going entities”, and

4 (B) by adding at the end the following:

5 “(c) *EMPLOYEE ACTIONS.*—

6 “(1) *IN GENERAL.*—Within 90 days of the ex-
7 haustion of all procedures in effect under subsection
8 (a) or (b) or after 180 days after the filing of a com-
9 plaint in accordance with such procedures (or, if no
10 applicable procedures are in effect under such sub-
11 section, within 180 days after the alleged violation),
12 an employee may bring a civil action in the appro-
13 priate United States district court against the em-
14 ployee’s employing authority or if employed by an in-
15 strumentality of Congress, against such instrumentality.
16 In any such action, the court may order such re-
17 lief as is provided under title VII of the Civil Rights
18 Act of 1964 and section 1977A of the Revised Statutes
19 (42 U.S.C. 1981a), except that—

20 “(A) the sum of the amount of compen-
21 satory damages awarded for future pecuniary
22 losses, emotional pain, suffering, inconvenience,
23 mental anguish, loss of enjoyment of life, and
24 other nonpecuniary losses and the amount of pu-
25 nitive damages shall not exceed, in the aggregate,

1 *for each complaining party \$300,000 in an ac-*
2 *tion against an employing authority, and*

3 *“(B) the amount of punitive damages may*
4 *not exceed \$50,000.*

5 *“(2) TRIAL.—In an action brought under para-*
6 *graph (1)—*

7 *“(A) any party may demand a trial by*
8 *jury, and*

9 *“(B) the court shall not inform the jury of*
10 *the dollar limitation prescribed by paragraph*
11 *(1).*

12 *“(3) FEES.—In an action brought under para-*
13 *graph (1), the court may allow the prevailing party*
14 *a reasonable attorney’s fees (including expert witness*
15 *fees) as part of the costs.*

16 *“(d) PAYMENTS.—(1) The Committee on House Ad-*
17 *ministration of the House of Representatives shall deter-*
18 *mine which account shall be used for payments (other than*
19 *punitive damages) to an aggrieved employee under this sec-*
20 *tion.*

21 *“(2) Punitive damages, if any, shall be assessed only*
22 *against the employing authority personally. No entity of*
23 *the Federal Government shall be liable for punitive damages*
24 *assessed under this section.*

1 “(e) *CONSIDERATIONS.*—*The rights and protections*
 2 *provided by this section do not prohibit the taking into con-*
 3 *sideration of—*

4 “(1) *the domicile of an individual with respect*
 5 *to a position under the clerk-hire allowance of the*
 6 *House of Representatives; or*

7 “(2) *the political affiliation of an individual*
 8 *with respect to a position under such clerk-hire allow-*
 9 *ance or a position on the staff of a committee.*

10 “(f) *NOTICE.*—*Each employing authority and instru-*
 11 *mentality of Congress shall post and keep posted, in con-*
 12 *spicuous places on its premises, a notice that shall be pre-*
 13 *pared by the Office of Fair Employment Practices or the*
 14 *instrumentality which sets forth such information as such*
 15 *Office or instrumentality considers to be appropriate to*
 16 *carry out this section.”.*

17 (2) *CONFORMING AMENDMENT.*—*Section*
 18 *117(a)(2)(B)(i) (2 U.S.C. 601(a)(2)(B)(i)) is amended*
 19 *by inserting before the period at the end the following:*
 20 *“, except as provided in subsections (c) through (f)”.*

21 ***TITLE IV—DISABILITIES***

22 ***SEC. 401. REFERENCE.***

23 *Whenever in this title an amendment or repeal is ex-*
 24 *pressed in terms of an amendment to, or repeal of, a section*
 25 *or other provision, the reference shall be considered to be*

1 *made to a section or other provision of the Americans with*
 2 *Disabilities Act of 1990.*

3 ***SEC. 402. APPLICATION TO CONGRESS.***

4 (a) *COVERAGE.*—Section 509(b)(2)(A) (42 U.S.C.
 5 12209(b)(2)(A)) is amended by adding at the end the follow-
 6 ing: “For purposes of this section, the term ‘employee’ also
 7 includes an individual who applies for employment and the
 8 term ‘employing authority’ also includes any agent of the
 9 employing authority and any Member who participates in
 10 determining the terms and conditions applicable to an em-
 11 ployee’s employment and any agent of such Member but
 12 with respect to the minority staff of a committee does not
 13 include the Chairman of such committee.”.

14 (b) *EMPLOYEE ACTIONS, PAYMENTS, CONSIDER-*
 15 *ATIONS, AND NOTICE.*—

16 (1) *AMENDMENT.*—Section 509 (42 U.S.C.
 17 12209) is amended—

18 (A) in subsection (c)(4), by adding before
 19 the period the following: “and includes any agent
 20 of any of the foregoing entities”, and

21 (B) by adding at the end the following:

22 “(d) *EMPLOYEE ACTIONS.*—

23 “(1) *IN GENERAL.*—Within 90 days of the ex-
 24 haustion of all procedures in effect under subsection
 25 (b)(2) or (c)(2) or after 180 days after the filing of

1 *a complaint in accordance with such procedures (or,*
2 *if no applicable procedures are in effect under such*
3 *subsection, within 180 days after the alleged viola-*
4 *tion), an employee may bring a civil action in the*
5 *appropriate United States district court against the*
6 *employee's employing authority or if employed by an*
7 *instrumentality of Congress, against such instrumen-*
8 *tality. In any such action, the court may order such*
9 *relief as is provided under title VII of the Civil*
10 *Rights Act of 1964 and section 1977A of the Revised*
11 *Statutes (42 U.S.C. 1981a), except that—*

12 *“(A) the sum of the amount of compen-*
13 *satory damages awarded for future pecuniary*
14 *losses, emotional pain, suffering, inconvenience,*
15 *mental anguish, loss of enjoyment of life, and*
16 *other nonpecuniary losses and the amount of pu-*
17 *nitive damages shall not exceed, in the aggregate,*
18 *for each complaining party \$300,000 in an ac-*
19 *tion against an employing authority, and*

20 *“(B) the amount of punitive damages may*
21 *not exceed \$50,000.*

22 *“(2) TRIAL.—In an action brought under para-*
23 *graph (1)—*

24 *“(A) any party may demand a trial by*
25 *jury, and*

1 “(B) the court shall not inform the jury of
2 the dollar limitation prescribed by paragraph
3 (1).

4 “(3) FEES.—In an action brought under para-
5 graph (1), the court may allow the prevailing party
6 reasonable attorney’s fees (including expert witness
7 fees) as part of the costs.

8 “(e) PAYMENTS.—(1) The Committee on House Ad-
9 ministration of the House of Representatives shall deter-
10 mine which account shall be used for payments (other than
11 punitive damages) to an aggrieved employee under this sec-
12 tion and shall issue guidelines to ensure such reimburse-
13 ment.

14 “(2) Punitive damages, if any, shall be assessed only
15 against the employing authority personally. No entity of
16 the Federal Government shall be liable for punitive damages
17 assessed under this section.

18 “(f) CONSIDERATIONS.—The rights and protections
19 provided by this section do not prohibit the taking into con-
20 sideration of—

21 “(1) the domicile of an individual with respect
22 to a position under the clerk-hire allowance of the
23 House of Representatives; or

1 “(2) the political affiliation of an individual
2 with respect to a position under such clerk-hire allow-
3 ance or a position on the staff of a committee.

4 “(g) NOTICE.—Each employing authority and instru-
5 mentality of Congress shall post and keep posted, in con-
6 spicuous places on its premises, a notice that shall be pre-
7 pared by the Office of Fair Employment Practices or the
8 instrumentality which sets forth such information as such
9 Office or instrumentality considers to be appropriate to
10 carry out this section.”.

11 (2) CONFORMING AMENDMENT.—Section
12 509(b)(2)(B)(i) (42 U.S.C. 12209(b)(2)(B)(i)) is
13 amended by inserting before the period at the end the
14 following: “, except as provided in subsections (d)
15 through (g)”.

16 **TITLE V—GUIDELINES**

17 **SEC. 501. GUIDELINES.**

18 Any guidelines issued by any committee of the House
19 of Representatives to implement any provision of this Act
20 (other than title I) shall be published in the Congressional
21 Record for a period of at least 60 days before such imple-
22 mentation.

1 ***TITLE VI—EFFECTIVE DATE***

2 ***SEC. 601. EFFECTIVE DATE.***

3 *The amendments made by titles II, III, and IV of this*
 4 *Act shall take effect upon the expiration of 3-month period*
 5 *beginning on the date of the enactment of this Act.*

6 **SECTION 1. SHORT TITLE.**

7 **This Act may be cited as the “Federal Em-**
 8 **ployee Fairness Act of 1994”.**

9 **SEC. 2. AMENDMENTS RELATING TO ADMINISTRATIVE DE-**
 10 **TERMINATION OF FEDERAL EMPLOYEE DIS-**
 11 **CRIMINATION CLAIMS.**

12 **(a) DEFINITIONS.—Section 701 of the Civil**
 13 **Rights Act of 1964 (42 U.S.C. 2000e) is amend-**
 14 **ed—**

15 **(1) in paragraph (f) by striking “The**
 16 **term” and inserting “Except when it ap-**
 17 **pears as part of the term ‘Federal em-**
 18 **ployee’, the term”, and**

19 **(2) by adding at the end the follow-**
 20 **ing:**

21 **“(o) The term ‘administrative judge’ in-**
 22 **cludes an administrative law judge appointed**
 23 **under section 3105 of title 5 of the United**
 24 **States Code.**

1 “(p) The term ‘Commission’ means the
2 Equal Employment Opportunity Commission.

3 “(q) The term ‘entity of the Federal Gov-
4 ernment’ means an entity to which section
5 717(a) applies, except that such term does not
6 include the Library of Congress.

7 “(r) The term ‘Federal employee’ means an
8 individual employed by, or who applies for
9 employment with, an entity of the Federal
10 Government.

11 “(s) The term ‘Federal employment’ means
12 employment by an entity of the Federal Gov-
13 ernment.

14 “(t) The terms ‘government’, ‘government
15 agency’, and ‘political subdivision’ do not in-
16 clude an entity of the Federal Government.”.

17 **(b) EEOC DETERMINATION OF FEDERAL EM-**
18 **PLOYMENT DISCRIMINATION CLAIMS.—Section**
19 **717 of the Civil Rights Act of 1964 (42 U.S.C.**
20 **2000e–16) is amended—**

21 **(1) in subsection (b)—**

22 **(A) by inserting “(1)” after “(b)”,**

23 **(B) in the second sentence—**

24 **(i) by redesignating para-**
25 **graphs (1), (2), and (3), as sub-**

1 **paragraphs (A), (B), and (C), re-**
2 **spectively,**

3 **(ii) in the subparagraph (B),**
4 **as so redesignated, by striking**
5 **“and” at the end,**

6 **(iii) in subparagraph (C), as so**
7 **redesignated, by striking the pe-**
8 **riod at the end and inserting “;**
9 **and”, and**

10 **(iv) by inserting after sub-**
11 **paragraph (C), as so redesignated,**
12 **the following:**

13 **“(D) require each entity of the Fed-**
14 **eral Government—**

15 **“(i) to make counseling available**
16 **to Federal employees who believe**
17 **such entity has discriminated against**
18 **them in violation of this section, for**
19 **the purpose of trying to resolve the**
20 **matters with respect to which such**
21 **discrimination is alleged (Such entity**
22 **shall assist such employee to identify**
23 **the respondent required by sub-**
24 **section (c)(1) to be named in a com-**
25 **plaint alleging such violation, shall**

1 **inform such Federal employee indi-**
2 **vidually of the procedures and dead-**
3 **lines that apply under this section to**
4 **a claim alleging such discrimination,**
5 **and shall make such counseling avail-**
6 **able throughout the administrative**
7 **process.);**

8 **“(ii) to establish a voluntary alter-**
9 **native dispute resolution process to**
10 **resolve complaints, except that a Fed-**
11 **eral employee’s decision to forgo such**
12 **process shall not affect the rights of**
13 **such employee under this title;**

14 **“(iii) not to discourage Federal**
15 **employees from filing complaints on**
16 **any matter relating to discrimination**
17 **in violation of this section;**

18 **“(iv) not to require Federal em-**
19 **ployees to participate in conciliation**
20 **made available under subsection**
21 **(c)(1)(A)(ii) unless such entity has an**
22 **alternative dispute resolution process**
23 **approved by the Commission as de-**
24 **scribed in such subsection; and**

1 “(v) not to require Federal em-
2 ployees to participate in a dispute
3 resolution process made available
4 under clause (ii).

5 “(2)(A) A Federal employee who believes
6 that an entity of the Federal Government has
7 discriminated against such employee in viola-
8 tion of this section, to whom subsection
9 (c)(1)(A)(ii) applies, who has requested such
10 entity to provide the conciliation described in
11 subsection (c)(1)(A)(ii), and who is the subject
12 of, or about to be the subject of, a personnel
13 action to be taken against such employee as
14 a result of expressing that belief or requesting
15 such conciliation may file with the Commis-
16 sion a request for a stay of such personnel ac-
17 tion, together with an affidavit made by such
18 employee in support of such request.

19 “(B) Immediately after receiving such re-
20 quest so supported, the Commission shall ap-
21 point an administrative judge to review such
22 request. Subsection (f)(3) shall apply with re-
23 spect to such review and to the issuance of a
24 stay requested under subparagraph (A).”,

1 **(C) in the third sentence by strik-**
2 **ing “The” and inserting the following:**

3 **“(3) The”,**

4 **(D) in the fourth sentence by re-**
5 **designating paragraphs (1) and (2) as**
6 **subparagraphs (A) and (B), respec-**
7 **tively,**

8 **(E) in the last sentence by strik-**
9 **ing “With” and inserting the follow-**
10 **ing:**

11 **“(4) With”, and**

12 **(F) by adding at the end the fol-**
13 **lowing:**

14 **“(5)(A) Subject to subparagraph (B), an**
15 **unlawful employment practice of the kind de-**
16 **scribed in section 704(a) is established under**
17 **this section if an employee or applicant for**
18 **employment demonstrates that his opposing**
19 **any practice made an unlawful employment**
20 **practice by this title, his making a charge, tes-**
21 **tifying, assisting, or participating in any man-**
22 **ner in an investigation, proceeding, or hear-**
23 **ing under this title, or his communicating**
24 **with the Congress regarding discrimination**
25 **in violation of this section was a contributing**

1 factor in an adverse personnel action that
2 was taken or is to be taken against such em-
3 ployee or applicant.

4 “(B) On a claim in which a Federal em-
5 ployee proves a violation under subparagraph
6 (A) and a respondent demonstrates, on the
7 basis of the evidentiary standard specified in
8 section 1221(e)(2) of title 5 of the United
9 States Code, that the respondent would have
10 taken the same personnel action in the ab-
11 sence of the impermissible motivating factor,
12 the court—

13 “(i) may grant declaratory relief, in-
14 junctive relief (except as provided in
15 clause (ii)), and attorney’s fees and costs
16 demonstrated to be directly attributable
17 only to the pursuit of a claim under sub-
18 paragraph (A); and

19 “(ii) shall not award damages or issue
20 an order requiring any admission, rein-
21 statement, hiring, promotion, or payment
22 not described in clause (i).”,

23 (2) by striking subsection (c),

24 (3) in subsection (d)—

25 (A) by inserting “(1)” after “(d)”,

1 **(B) by striking “(k)” and inserting**
2 **“(j)”**,

3 **(C) by striking “brought here-**
4 **under” and inserting “commenced**
5 **under this section”, and**

6 **(D) by adding at the end the fol-**
7 **lowing:**

8 **“(2) The head of the department, agency,**
9 **or unit in which discrimination in violation of**
10 **this section is alleged to have occurred shall**
11 **be the defendant in a civil action alleging**
12 **such violation. If a department, unit, or agen-**
13 **cy is named as the defendant, the court shall**
14 **freely grant leave to amend the complaint to**
15 **name the head of such department, agency, or**
16 **unit.**

17 **“(3)(A) In any action or proceeding under**
18 **this section, the court, in its discretion, may**
19 **allow the prevailing party (other than an en-**
20 **tity of the Federal Government) a reasonable**
21 **attorney’s fee (including expert fees) and**
22 **costs as a court has authority to award under**
23 **section 706(k), as amended from time to time,**
24 **and the same interest to compensate for delay**

1 in payment as in cases involving nonpublic
2 parties.

3 “(B) If an action brought under this sec-
4 tion by or on behalf of a Federal employee is
5 found by the court to be unreasonable,
6 groundless, or vexatious, the court, in its dis-
7 cretion, may allow the respondent a reason-
8 able attorney’s fee (including expert fees),
9 costs, and interest as a court has authority to
10 award in an action to a prevailing party
11 under subparagraph (A).”,

12 (4) by redesignating subsections (d)
13 and (e) as subsections (o) and (p), respec-
14 tively, and

15 (5) by inserting after subsection (b)
16 the following:

17 “(c)(1)(A) Except as provided in subpara-
18 graphs (B), (C), (D), and (E), a complaint filed
19 by or on behalf of a Federal employee or a
20 class of Federal employees and alleging a
21 claim of discrimination arising under this sec-
22 tion shall name as the respondent, and be
23 filed with, the head of the department, agen-
24 cy, or unit in which such discrimination is al-

1 **leged to have occurred, or with the Commis-**
2 **sion—**

3 **“(i) not later than 180 days after the**
4 **alleged discrimination occurs, except as**
5 **provided in clause (ii); and**

6 **“(ii) in the case of a respondent that**
7 **provides to such employee a voluntary al-**
8 **ternative dispute resolution process ap-**
9 **proved by the Commission in accordance**
10 **with rules issued by the Commission**
11 **under section 6(a)(4) of the Federal Em-**
12 **ployee Fairness Act of 1994, after the ex-**
13 **piration of the 20-day period beginning**
14 **on the date the Federal employee specifi-**
15 **cally named in the complaint (or an indi-**
16 **vidual authorized to represent such Fed-**
17 **eral employee or both) requests and of-**
18 **fers to meet once with an individual au-**
19 **thorized to represent the respondent in**
20 **accordance with subparagraph (B) to en-**
21 **gage in the precomplaint conciliation ap-**
22 **proved under such section by the Com-**
23 **mission to be provided by the respond-**
24 **ent, except that such 20-day period shall**

1 **be excluded for purposes calculating**
2 **such 180 days.**

3 **“(B) For purposes of subparagraph**
4 **(A)(ii)—**

5 **“(i) conciliation shall occur during**
6 **the regular working hours of such Fed-**
7 **eral employee; and**

8 **“(ii) an individual may not be author-**
9 **ized to represent the respondent if such**
10 **individual—**

11 **“(I) has or has had any involve-**
12 **ment in the circumstances relating to**
13 **any of such claims; or**

14 **“(II) has or has had supervisory**
15 **authority over such Federal em-**
16 **ployee.**

17 **“(C) If, not later than 180 days (deter-**
18 **mined under subparagraph (A)) after the al-**
19 **leged discrimination occurs, the complaint is**
20 **filed—**

21 **“(i) with such department, agency, or**
22 **unit and fails to name the head of the de-**
23 **partment, agency, or unit as the respond-**
24 **ent; or**

1 “(ii) except as provided in subpara-
2 graph (E), with any other entity of the
3 Federal Government, regardless of the re-
4 spondent named;
5 the complaint shall be considered to be filed
6 in compliance with subparagraph (A).

7 “(D) A complaint filed under this section
8 with respect to a claim of discrimination aris-
9 ing under this section shall be dismissed if—

10 “(i) such claim is a grievance that is
11 subject to section 7121 of title 5, United
12 States Code; and

13 “(ii) the aggrieved Federal employee
14 has, in the discretion of the Federal em-
15 ployee, exercised the option under sec-
16 tion 7121(d) of such title to raise the mat-
17 ter under the negotiated grievance proce-
18 dure before filing the complaint.

19 “(E) A complaint filed by or on behalf of
20 a Federal employee, or a class of Federal em-
21 ployees, employed by a department, agency,
22 or unit in the intelligence community (as de-
23 fined by Executive Order 12333 or any succes-
24 sor to such order) and alleging a claim of dis-
25 crimination arising under this section shall

1 **be filed with the department, agency, or unit**
2 **in which such discrimination is alleged to**
3 **have occurred not later than 180 days (deter-**
4 **mined under subparagraph (A)) after the al-**
5 **leged discrimination occurs.**

6 **“(2) If the complaint is filed with an entity**
7 **of the Federal Government other than the de-**
8 **partment, agency, or unit in which such dis-**
9 **crimination is alleged to have occurred,**
10 **then—**

11 **“(A) such entity (other than the Com-**
12 **mission) shall transmit the complaint to**
13 **the Commission, not later than 10 days**
14 **after receiving the complaint; and**

15 **“(B) the Commission shall transmit a**
16 **copy of the complaint, not later than 10**
17 **days after receiving the complaint, to the**
18 **head of the department, agency, or unit**
19 **in which such discrimination is alleged to**
20 **have occurred (hereinafter in this section**
21 **referred to as the ‘respondent’).**

22 **“(3) Not later than 10 days after the re-**
23 **spondent receives the complaint from a**
24 **source other than the Commission, the re-**

1 spondent shall transmit to the Commission a
2 copy of the complaint.

3 “(d) Throughout the period beginning on
4 the date the respondent receives the com-
5 plaint and ending on the latest date by which
6 all administrative and judicial proceedings
7 available under this section have been con-
8 cluded with respect to such claim, the re-
9 spondent shall collect and preserve docu-
10 ments and information (including the com-
11 plaint) that are relevant to such claim, includ-
12 ing the documents and information that com-
13 ply with rules issued by the Commission.

14 “(e)(1) The respondent shall make reason-
15 able efforts to conciliate each claim alleged in
16 the complaint beginning on the date the com-
17 plaint is filed under subsection (c). After the
18 complaint is filed, the respondent shall
19 promptly inform such Federal employee indi-
20 vidually of the procedures and deadlines that
21 apply under this section to a claim alleging
22 such discrimination.

23 “(2)(A) With respect to such claim, the re-
24 spondent may enter into a settlement agree-
25 ment with such Federal employee.

1 **“(B) The entity of the Federal Government**
2 **with which the complaint is filed under sub-**
3 **section (c) shall immediately give formal writ-**
4 **ten notice to such Federal employee that such**
5 **Federal employee may either—**

6 **“(i) before the expiration of the 90-**
7 **day period beginning on the date such**
8 **Federal employee receives such notice,**
9 **file with the Commission—**

10 **“(I) a written request for a deter-**
11 **mination of such claim under sub-**
12 **section (f) by an administrative judge**
13 **of the Commission, together with, at**
14 **the option of such Federal employee,**
15 **a request that the administrative**
16 **judge request a stay described in sub-**
17 **section (f)(3)(A);**

18 **“(II) if such claim alleges dis-**
19 **crimination in the Commission or al-**
20 **leges an action appealable to the**
21 **Merit Systems Protection Board, a**
22 **written request electing that a deter-**
23 **mination of such claim be made**
24 **under the procedures specified in ei-**
25 **ther subparagraph (A) or (B) of sec-**

tion 7702(a)(2) of title 5, United States Code, or a request described in subclause (I); or

“(III) if such claim alleges a grievance that is subject to section 7121 of title 5, United States Code, but not appealable to the Merit Systems Protection Board, a written request to raise such claim under the administrative and judicial procedures provided in such section 7121 or a request described in subclause (I); or

“(ii) in the 90-day period beginning on the date the complaint is filed under subsection (c) or in the 90-day period beginning on the date such Federal employee receives such notice (whichever 90-day period begins later), commence a civil action in an appropriate district court of the United States for de novo review of such claim.

“(3)(A) Such Federal employee may either—

“(i) file a written request described in clause (i) of paragraph (2)(B) at any time

1 **before the expiration of the 90-day period**
2 **specified in clause (i) of such paragraph;**
3 **or**

4 **“(ii) commence a civil action de-**
5 **scribed in clause (ii) of such paragraph**
6 **before the expiration of the applicable 90-**
7 **day period specified in paragraph**
8 **(2)(B)(ii).**

9 **“(B) If such Federal employee files a writ-**
10 **ten request under subclause (II) or (III) of**
11 **paragraph (2)(B)(i) and in accordance with**
12 **subparagraph (A)(i), the Commission shall**
13 **transmit the complaint, not later than 10 days**
14 **after the Commission receives the complaint,**
15 **to the appropriate agency for determination.**

16 **“(f)(1) If such Federal employee files a**
17 **written request under subsection**
18 **(e)(2)(B)(i)(I) and in accordance with sub-**
19 **section (e)(3)(A) with the Commission for a de-**
20 **termination under this subsection of a claim**
21 **with respect to which notice is required by**
22 **subsection (e)(2), then the Commission shall**
23 **transmit a copy of such request to the re-**
24 **spondent and, not later than 10 days after re-**
25 **ceiving such request, shall appoint an admin-**

1 **istrative judge of the Commission to deter-**
2 **mine such claim. If such request includes a re-**
3 **quest for a stay described in paragraph (3)(A),**
4 **then the Commission shall appoint an admin-**
5 **istrative judge immediately after receiving**
6 **such request.**

7 **“(2) Not later than 5 days after receiving**
8 **a copy of a request under subsection**
9 **(e)(2)(B)(i), the respondent shall transmit—**

10 **“(A) to the Commission if such re-**
11 **quest is for a determination under this**
12 **subsection; or**

13 **“(B) to the Merit Systems Protection**
14 **Board if such request is for a determina-**
15 **tion be made under the procedures speci-**
16 **fied in section 7702(a)(2)(A) of title 5,**
17 **United States Code;**

18 **a copy of all documents and information col-**
19 **lected by the respondent under subsection (d)**
20 **with respect to such claim.**

21 **“(3)(A) The administrative judge, in ac-**
22 **cordance with rules issued by the Commis-**
23 **sion, may request any member of the Commis-**
24 **sion to order a stay of any personnel action**
25 **for 45 days if the administrative judge deter-**

1 mines that there are reasonable grounds to
2 believe that the personnel action was taken
3 for discriminatory or retaliatory reasons pro-
4 hibited under this section.

5 “(B)(i) Any member of the Commission re-
6 quested under subparagraph (A) to order a
7 stay shall order such stay unless the member
8 determines that, under the facts and cir-
9 cumstances involved, such a stay does not
10 comply with such rules or otherwise would
11 not be appropriate.

12 “(ii) Unless denied under clause (i), any
13 stay requested under subparagraph (A) shall
14 be deemed to be ordered on the third cal-
15 endar day (excluding Saturdays, Sundays,
16 and legal holidays) after the date of the re-
17 quest.

18 “(C) If a stay is ordered under subpara-
19 graph (B), the member who received the re-
20 quest for such stay may terminate such stay
21 at any time after giving notice, and an oppor-
22 tunity for oral or written comments, to the ag-
23 grieved Federal employee on whose behalf
24 such stay was ordered.

1 **“(D)(i) The Commission may extend the**
2 **period of any stay granted under subpara-**
3 **graph (B) for any period that the Commission**
4 **considers appropriate.**

5 **“(ii) Members of the Commission shall**
6 **allow any entity of the Federal Government**
7 **that would be subject to a stay, or to the ex-**
8 **tension of a stay, to comment to such mem-**
9 **bers and the Commission on the request for**
10 **such stay and on a request for such extension.**

11 **“(iii) The respondent shall comply with a**
12 **stay in effect under this section.**

13 **“(4) The administrative judge shall deter-**
14 **mine whether the documents and information**
15 **received under paragraph (2) comply with**
16 **subsection (d) and are complete and accurate.**
17 **If the administrative judge finds that the re-**
18 **spondent has failed to produce the documents**
19 **and information necessary to comply with**
20 **such subsection, the administrative judge**
21 **shall, in the absence of good cause shown by**
22 **the respondent, impose any of the sanctions**
23 **specified in paragraph (6)(C) and shall re-**
24 **quire the respondent—**

1 **“(A) to obtain any additional docu-**
2 **ments and information necessary to com-**
3 **ply with such subsection; and**

4 **“(B) to correct any inaccuracy in the**
5 **documents and information so received.**

6 **“(5)(A) After examining the documents**
7 **and information received under paragraph**
8 **(4), the administrative judge shall issue an**
9 **order dismissing—**

10 **“(i) any frivolous claim alleged in the**
11 **complaint;**

12 **“(ii) any claim of a Federal employee**
13 **who fails to comply with subsection**
14 **(c)(1)(A)(ii) if applicable to such em-**
15 **ployee; and**

16 **“(iii) the complaint if it fails to state**
17 **a nonfrivolous claim for which relief may**
18 **be granted under this section.**

19 **“(B)(i) If a claim or the complaint is dis-**
20 **missed under subparagraph (A), the adminis-**
21 **trative judge shall give formal written notice**
22 **to the aggrieved Federal employee that such**
23 **Federal employee may, before the expiration**
24 **of the 90-day period beginning on the date**
25 **such Federal employee receives such notice—**

1 **“(I) file with the Commission a writ-**
2 **ten request for appellate review of such**
3 **order; or**

4 **“(II) commence a civil action in an**
5 **appropriate district court of the United**
6 **States for de novo review of such claim**
7 **or the complaint.**

8 **“(ii) Such Federal employee may com-**
9 **mence such civil action after the dismissal of**
10 **such claim or the complaint and before the**
11 **expiration of the 90-day period specified in**
12 **clause (i).**

13 **“(6)(A)(i) If the complaint is not dismissed**
14 **under paragraph (5)(A), the administrative**
15 **judge shall make a determination, after an op-**
16 **portunity for a hearing, on the merits of each**
17 **claim that is not dismissed under such para-**
18 **graph. The administrative judge shall make a**
19 **determination on the merits of any other**
20 **nonfrivolous claim under this section, and on**
21 **the merits of any action such Federal em-**
22 **ployee may appeal to the Merit Systems Pro-**
23 **tection Board, reasonably expected to arise**
24 **from the facts on which the complaint is**
25 **based.**

1 “(ii) On the request of the aggrieved Fed-
2 eral employee, the administrative judge
3 shall—

4 “(I) determine whether the adminis-
5 trative proceeding with respect to such
6 claim may be maintained as a class pro-
7 ceeding; and

8 “(II) if the administrative proceeding
9 may be so maintained, shall describe
10 those whom the administrative judge
11 finds to be members of such class.

12 “(B) With respect to such claim, a party
13 may conduct discovery by such means as may
14 be available in a civil action to the extent
15 deemed appropriate by the administrative
16 judge.

17 “(C) If the aggrieved Federal employee or
18 the respondent fails without good cause to re-
19 spond fully and in a timely fashion to a re-
20 quest made or approved by the administrative
21 judge for information or the attendance of a
22 witness, and if such information or such wit-
23 ness is solely in the control of the party who
24 so fails to respond, then the administrative
25 judge shall—

1 **“(i) draw an adverse inference that**
2 **the requested information, or the testi-**
3 **mony of the requested witness, would**
4 **have reflected unfavorably on the party**
5 **who so fails to respond;**

6 **“(ii) consider the matters to which**
7 **such information or such testimony per-**
8 **tains to be established in favor of the op-**
9 **posing party;**

10 **“(iii) exclude other evidence offered**
11 **by the party who so fails to respond;**

12 **“(iv) grant full or partial relief, in-**
13 **cluding—**

14 **“(I) relief of the kinds described**
15 **in section 706(g); and**

16 **“(II) compensatory damages for**
17 **unlawful intentional discrimination**
18 **(not an employment practice that is**
19 **unlawful because of its disparate im-**
20 **pact) prohibited under this section,**
21 **subject to the limitations specified in**
22 **section 1977A(b)(3) of the Revised**
23 **Statutes of the United States;**
24 **to the aggrieved Federal employee; or**

1 **“(v) take such other action the admin-**
2 **istrative judge considers to be appro-**
3 **priate.**

4 **“(D) In a hearing on a claim, the adminis-**
5 **trative judge shall—**

6 **“(i) limit attendance to persons who**
7 **have a direct connection with such claim;**

8 **“(ii) bring out pertinent facts and rel-**
9 **evant employment practices and policies,**
10 **and ensure that the record is developed**
11 **for a full and fair determination of such**
12 **claim, but exclude irrelevant or unduly**
13 **repetitious information;**

14 **“(iii) permit all parties to examine**
15 **and cross examine witnesses; and**

16 **“(iv) require that testimony be given**
17 **under oath or affirmation.**

18 **“(E) At the request of any party or the ad-**
19 **ministrative judge, a transcript of all or part**
20 **of such hearing shall be provided in a timely**
21 **manner and simultaneously to the parties and**
22 **the Commission. The respondent shall bear**
23 **the cost of providing such transcript.**

24 **“(F) The administrative judge shall have**
25 **authority—**

1 **“(i) to administer oaths and affirma-**
2 **tions;**

3 **“(ii) to regulate the course of hear-**
4 **ings;**

5 **“(iii) to rule on offers of proof and re-**
6 **ceive evidence;**

7 **“(iv) to issue subpoenas to compel—**

8 **“(I) the production of documents**
9 **or information by the entity of the**
10 **Federal Government in which dis-**
11 **crimination is alleged to have oc-**
12 **curred; and**

13 **“(II) the attendance of witnesses**
14 **who are Federal officers or employ-**
15 **ees of such entity;**

16 **“(v) to request the Commission to**
17 **issue subpoenas to compel the production**
18 **of documents or information by any other**
19 **entity of the Federal Government or by**
20 **the aggrieved Federal employee, and the**
21 **attendance of other witnesses, except**
22 **that any witness who is not an officer or**
23 **employee of an entity of the Federal Gov-**
24 **ernment may be compelled only to attend**
25 **any place—**

1 **“(I) less than 100 miles from the**
2 **place where such witness resides, is**
3 **employed, transacts business in per-**
4 **son, or is served; or**

5 **“(II) at such other convenient**
6 **place as is fixed by the administrative**
7 **judge;**

8 **and shall be paid fees and allowances, by**
9 **the party that requests the subpoena, to**
10 **the same extent that fees and allowances**
11 **are paid to witnesses under chapter 119**
12 **of title 28, United States Code, as amend-**
13 **ed from time to time;**

14 **“(vi) to exclude witnesses whose testi-**
15 **mony would be unduly repetitious;**

16 **“(vii) to exclude any person from a**
17 **hearing for contumacious conduct, or for**
18 **misbehavior, that obstructs such hearing;**
19 **and**

20 **“(viii) to grant full or partial relief,**
21 **including—**

22 **“(I) relief of the kinds described**
23 **in section 706(g); and**

24 **“(II) compensatory damages for**
25 **unlawful intentional discrimination**

1 (not an employment practice that is
2 unlawful because of its disparate im-
3 pact) prohibited under this section,
4 subject to the limitations specified in
5 section 1977A(b)(3) of the Revised
6 Statutes of the United States.

7 “(G) The administrative judge and the
8 Commission shall have authority to award to
9 a prevailing party (other than an entity of the
10 Federal Government)—

11 “(i) a reasonable attorney’s fee (in-
12 cluding expert fees) and costs as a court
13 has authority to award under section
14 706(k), as amended from time to time;
15 and

16 “(ii) the same interest to compensate
17 for delay in payment as in cases involv-
18 ing nonpublic parties.

19 “(H) The Commission shall have authority
20 to issue subpoenas described in subparagraph
21 (F)(v).

22 “(I) In the case of contumacy or failure to
23 obey a subpoena issued under subparagraph
24 (F) or (H), the United States district court for
25 the judicial district in which the person to

1 **whom the subpoena is addressed resides or is**
2 **served may issue an order requiring such per-**
3 **son to appear at any designated place to tes-**
4 **tify or to produce documentary or other evi-**
5 **dence.**

6 **“(7)(A) Except as provided in subpara-**
7 **graph (B), the administrative judge shall issue**
8 **a written order making the determination re-**
9 **quired by paragraph (6)(A), and granting or**
10 **denying relief, not later than—**

11 **“(i)(I) 300 days after the complaint**
12 **containing such claim is filed by or on be-**
13 **half of a Federal employee if such com-**
14 **plaint is filed in the 1-year period begin-**
15 **ning on the effective date of this sub-**
16 **section;**

17 **“(II) except as provided in subclause**
18 **(I), 210 days after the complaint contain-**
19 **ing such claim is filed by or on behalf of**
20 **a Federal employee; or**

21 **“(ii) 2 years and 30 days after the**
22 **complaint containing such claim is filed**
23 **on behalf of a class of Federal employees;**
24 **except that these time periods shall be ex-**
25 **tended for 30 days if the administrative judge**

1 certifies, in writing, that such 30-day period
2 is needed to secure additional documents or
3 information from the respondent to have a
4 complete administrative record.

5 “(B) The administrative judge shall issue
6 such order not later than 30 days after the ap-
7 plicable period specified in subparagraph (A)
8 if the administrative judge certifies in writ-
9 ing, before the expiration of such applicable
10 period—

11 “(i) that such 30-day period is nec-
12 essary to make such determination; and

13 “(ii) the particular and unusual cir-
14 cumstances that prevent the administra-
15 tive judge from complying with the appli-
16 cable period specified in subparagraph
17 (A).

18 “(C) The administrative judge may apply
19 to the Commission to extend any period appli-
20 cable under subparagraph (A) or (B) if mani-
21 fest injustice would occur in the absence of
22 such an extension.

23 “(D) The Commission—

24 “(i) may not grant such extension; or

25 “(ii) shall terminate such extension;

1 if the aggrieved Federal employee shows that
2 such extension would prejudice a claim of, or
3 otherwise harm, such Federal employee.

4 “(E) In addition to findings of fact and
5 conclusions of law, such order shall include
6 formal written notice to each party that be-
7 fore the expiration of the 90-day period begin-
8 ning on the date such party receives such
9 order—

10 “(i) the aggrieved Federal employee
11 may commence a civil action in an appro-
12 priate district court of the United States
13 for de novo review of a claim with re-
14 spect to which such order is issued; and

15 “(ii) unless and until a civil action is
16 commenced in such 90-day period under
17 clause (i) with respect to such claim, any
18 party may file with the Commission a
19 written request for appellate review of
20 the determination made, and relief grant-
21 ed or denied, in such order with respect
22 to such claim.

23 “(F) Such Federal employee may com-
24 mence such civil action at any time before the
25 expiration of the 90-day period beginning on

1 the date such Federal employee receives an
2 order described in subparagraph (A).

3 “(G) If such order applies to more than
4 one claim and if—

5 “(i) such employee does not com-
6 mence a civil action in accordance with
7 subparagraph (E)(i); and

8 “(ii) neither party requests appellate
9 review in accordance with subparagraph
10 (E)(ii);

11 with respect to a particular claim, then the
12 determination made, and relief granted, in
13 such order with respect to such particular
14 claim shall be enforceable immediately.

15 “(g)(1) If a party files timely a written re-
16 quest in accordance with subsection
17 (f)(5)(B)(i) or (f)(7)(E)(ii) with the Commission
18 for appellate review of the determination
19 made, and relief granted or denied, with re-
20 spect to a claim in such order, then the Com-
21 mission shall immediately transmit a copy of
22 such request to the other parties involved and
23 to the administrative judge who issued such
24 order.

1 **“(2) Not later than 7 days after receiving**
2 **a copy of such request, the administrative**
3 **judge shall transmit to the Commission the**
4 **record of the proceeding on which such order**
5 **is based, including all documents and infor-**
6 **mation collected by the respondent under**
7 **subsection (d).**

8 **“(3)(A) After allowing the parties to file**
9 **briefs with respect to such determination, the**
10 **Commission shall issue a written order with**
11 **respect to such claim affirming, reversing, or**
12 **modifying the applicable provisions of the**
13 **order of the administrative judge not later**
14 **than—**

15 **“(i) 150 days after receiving such re-**
16 **quest; or**

17 **“(ii) 30 days after such 150-day period**
18 **if the Commission certifies in writing, be-**
19 **fore the expiration of such 150-day pe-**
20 **riod—**

21 **“(I) that such 30-day period is**
22 **necessary to review such claim; and**

23 **“(II) the particular and unusual**
24 **circumstances that prevent the Com-**

1 **mission from complying with clause**
2 **(i).**

3 **“(B) The Commission shall affirm the de-**
4 **termination made, and relief granted or de-**
5 **nied, by the administrative judge with respect**
6 **to such claim if such determination and such**
7 **relief are supported by a preponderance of**
8 **the evidence in the record taken as a whole**
9 **and are otherwise in accordance with law.**
10 **The Commission shall accord substantial def-**
11 **erence to the findings of fact of the adminis-**
12 **trative judge.**

13 **“(C) In addition to findings of fact and**
14 **conclusions of law, the Commission shall in-**
15 **clude in its order formal written notice to the**
16 **aggrieved Federal employee that, before the**
17 **expiration of the 90-day period beginning on**
18 **the date such Federal employee receives such**
19 **order, such Federal employee may commence**
20 **a civil action in an appropriate district court**
21 **of the United States for de novo review of a**
22 **claim with respect to which such order is is-**
23 **sued.**

24 **“(D) Such Federal employee may com-**
25 **mence such civil action at any time before the**

1 **expiration of the 90-day period beginning on**
2 **the date such Federal employee receives an**
3 **order described in subparagraph (A).**

4 **“(h)(1) In addition to the periods author-**
5 **ized by subsections (f)(7)(F) and (g)(3)(D)—**

6 **“(A) during the period beginning 20**
7 **days after the expiration of the applica-**
8 **ble period specified in subparagraph (A)**
9 **or (B) of subsection (f)(7) and ending on**
10 **the date the administrative judge issues**
11 **under such subsection an order with re-**
12 **spect to such claim; and**

13 **“(B) during the period beginning 20**
14 **days after the expiration of the applica-**
15 **ble period specified in subsection**
16 **(g)(3)(A) and ending on the date the Com-**
17 **mission issues under such subsection an**
18 **order with respect to such claim;**

19 **such Federal employee may commence a civil**
20 **action in an appropriate district court of the**
21 **United States for de novo review of such**
22 **claim.**

23 **“(2) Whenever a civil action is commenced**
24 **timely and otherwise in accordance with this**
25 **section to determine the merits of a claim**

1 arising under this section, the jurisdiction of
2 the administrative judge or the Commission
3 (as the case may be) to determine the merits
4 of such claim shall terminate.

5 “(i) A Federal employee who prevails on a
6 claim arising under this section may bring a
7 civil action in an appropriate district court of
8 the United States to enforce—

9 “(1) the provisions of a settlement
10 agreement applicable to such claim;

11 “(2) the provisions of an order issued
12 by an administrative judge under sub-
13 section (f)(7)(A) applicable to such claim
14 if—

15 “(A) a request is not filed timely
16 under subsection (g)(1) for appellate
17 review by the Commission; and

18 “(B) a civil action is not com-
19 menced timely under subsection
20 (g)(3)(D) for de novo review;
21 of such claim; or

22 “(3) the provisions of an order issued
23 by the Commission under subsection
24 (g)(3)(A) applicable to such claim if a civil
25 action is not commenced timely under

1 **subsection (g)(3)(D) for de novo review of**
2 **such claim.**

3 **“(j) Any amount awarded under this sec-**
4 **tion (including fees, costs, and interest award-**
5 **ed under subsection (f)(6)(G)), or under title**
6 **28 of the United States Code, with respect to**
7 **a violation of this section, shall be paid by the**
8 **entity of the Federal Government that vio-**
9 **lated such subsection from any funds made**
10 **available to such entity by appropriation or**
11 **otherwise.**

12 **“(k)(1) An entity of the Federal Govern-**
13 **ment against which a claim of discrimination**
14 **is alleged in a complaint filed in an adminis-**
15 **trative proceeding or a civil action under this**
16 **section shall grant the aggrieved Federal em-**
17 **ployee paid administrative leave if otherwise**
18 **on duty, for time expended in accordance**
19 **with rules issued by the Commission to carry**
20 **out this section, except that such leave shall**
21 **include reasonable time for—**

22 **“(A) preparation of a complaint based**
23 **on such allegation;**

24 **“(B) conciliation required by sub-**
25 **section (c)(1)(A)(ii);**

1 **“(C) responding to requests made by**
2 **the Commission (including administra-**
3 **tive judges) or the respondent for infor-**
4 **mation; and**

5 **“(D) attendance at such proceeding or**
6 **action.**

7 **“(2) Except as provided in paragraph (1),**
8 **an entity of the Federal Government shall**
9 **grant a Federal employee—**

10 **“(A) paid administrative leave to par-**
11 **ticipate for the benefit of a claimant in**
12 **an administrative proceeding or civil ac-**
13 **tion commenced under this section to the**
14 **same extent and under such cir-**
15 **cumstances as such entity would grant**
16 **an employee official duty or paid admin-**
17 **istrative leave to participate for the bene-**
18 **fit of a Federal entity in an administra-**
19 **tive proceeding or civil action com-**
20 **menced under this section against such**
21 **entity; and**

22 **“(B) other leave to participate for the**
23 **benefit of a claimant in an administrative**
24 **proceeding or civil action commenced**
25 **under this section to the same extent and**

1 **under such circumstances as such entity**
2 **would grant an employee other leave to**
3 **participate for the benefit of a Federal**
4 **entity in an administrative proceeding or**
5 **civil action commenced under this sec-**
6 **tion against such entity.**

7 **“(l)(1) In enforcing compliance with an**
8 **order issued by an administrative judge or**
9 **the Commission, the Commission may make a**
10 **written determination that—**

11 **“(A) any officer or employee of the**
12 **agency, department, or unit charged with**
13 **complying with such order; or**

14 **“(B) any officer or employee of the**
15 **United States determined to be respon-**
16 **sible for the failure of the agency, depart-**
17 **ment, or unit to comply with such order;**
18 **who is not an officer or employee appointed**
19 **by the President by and with the advice and**
20 **consent of the Senate, shall not be entitled to**
21 **receive payment for service as an officer or**
22 **employee for the period during which such**
23 **order has not been complied with. The Com-**
24 **mission shall certify to the Comptroller Gen-**
25 **eral of the United States that a determination**

1 under this paragraph has been made, and no
2 payment shall be made out of the Treasury of
3 the United States for any service specified in
4 such determination.

5 “(2) In enforcing compliance with such
6 order with respect to any officer or employee
7 described in subparagraph (A) or (B) of para-
8 graph (1) who is an officer or employee ap-
9 pointed by the President by and with the ad-
10 vice and consent of the Senate, the Commis-
11 sion shall notify the President that such offi-
12 cer or employee has failed to obey such order.

13 “(m) If with respect to the merits of a
14 claim of intentional discrimination (other
15 than an employment practice that is unlawful
16 because of its disparate impact) prohibited by
17 this section, a Federal employee prevails in a
18 proceeding under subsection (f) or a civil ac-
19 tion commenced under this section, then not
20 later than 15 days after issuing an order find-
21 ing liability under this section, the adminis-
22 trative judge or the district court involved
23 shall transmit to the Office of Special Counsel
24 a copy of such order.

1 “(n) This section, as in effect immediately
2 before the effective date of the Federal Em-
3 ployee Fairness Act of 1994, shall apply with
4 respect to employment in the Library of Con-
5 gress.”.

6 SEC. 3. AMENDMENTS TO THE AGE DISCRIMINATION IN EM-
7 PLOYMENT ACT AND THE REHABILITATION
8 ACT OF 1973.

9 (a) ENFORCEMENT BY EEOC.—(1) Section 15
10 of the Age Discrimination in Employment Act
11 of 1967 (29 U.S.C. 633a) is amended—

12 (A) by striking subsections (c) and (d),
13 (B) by inserting after subsection (b)
14 the following:

15 “(c)(1)(A) Except as provided in subpara-
16 graph (B), any individual aggrieved by a vio-
17 lation of subsection (a) of this section may file
18 a complaint with the Commission in accord-
19 ance with section 717 of the Civil Rights Act
20 of 1964.

21 “(B) Subsections (c) and (d) of this section,
22 as in effect immediately before the effective
23 date of the Federal Employee Fairness Act of
24 1994, shall apply with respect to employment
25 in the Library of Congress.

1 **“(2) Except as provided in paragraph**
2 **(1)(B) and subsection (d), such section 717**
3 **shall apply to a violation alleged in a com-**
4 **plaint filed under paragraph (1) in the same**
5 **manner as such section applies to a claim**
6 **arising under section 717 of such Act.**

7 **“(d)(1) If an individual aggrieved by a vio-**
8 **lation of this section does not file a complaint**
9 **under subsection (c)(1), such individual may**
10 **commence a civil action—**

11 **“(A) not less than 30 days after filing**
12 **with the Commission a notice of intent to**
13 **commence such action; and**

14 **“(B) not more than 2 years after the**
15 **alleged violation of this section occurs;**
16 **in an appropriate district court of the United**
17 **States for de novo review of such violation.**

18 **“(2) On receiving such notice, the Commis-**
19 **sion shall—**

20 **“(A) promptly notify all persons**
21 **named in such notice as prospective de-**
22 **fendants in such action; and**

23 **“(B) take any appropriate action to**
24 **ensure the elimination of any unlawful**
25 **practice.**

1 **“(3) Section 717(o) of the Civil Rights Act**
2 **of 1964 (42 U.S.C. 2000e-16(o)) shall apply to**
3 **civil actions commenced under this sub-**
4 **section in the same manner as such section**
5 **applies to civil actions commenced under sec-**
6 **tion 717 of the Civil Rights Act of 1964.”,**

7 **(C) in subsection (f)—**

8 **(i) by inserting “(1)” after “(f)”,**

9 **(ii) by striking “section 12(b)” and**
10 **inserting “sections 4(d) and 12(b)”,**
11 **and**

12 **(iii) by adding at the end the fol-**
13 **lowing:**

14 **“(2)(A) Subject to subparagraph (B), an**
15 **unlawful personnel action of the kind de-**
16 **scribed in section 4(d) is established under**
17 **subsection (a) if an employee or applicant for**
18 **employment demonstrates that his opposing**
19 **any practice made an unlawful employment**
20 **practice by subsection (a), his making a**
21 **charge, testifying, assisting, or participating**
22 **in any manner in an investigation, proceed-**
23 **ing, or hearing under this section, or his com-**
24 **municating with the Congress regarding dis-**
25 **crimination in violation of subsection (a) was**

1 a contributing factor in an adverse personnel
2 action that was taken or is to be taken against
3 such employee or applicant.

4 “(B) On a claim in which a Federal em-
5 ployee proves a violation under subparagraph
6 (A) and a respondent demonstrates, on the
7 basis of the evidentiary standard specified in
8 section 1221(e)(2) of title 5 of the United
9 States Code, that the respondent would have
10 take the same personnel action in the absence
11 of the impermissible motivating factor, the
12 court—

13 “(i) may grant declaratory relief, in-
14 junctive relief (except as provided in
15 clause (ii)), and attorney’s fees and costs
16 demonstrated to be directly attributable
17 only to the pursuit of a claim under sub-
18 paragraph (A); and

19 “(ii) shall not award damages or issue
20 an order requiring any admission, rein-
21 statement, hiring, promotion, or payment
22 not described in clause (i).”,

23 (2) Section 505 of the Rehabilitation Act of
24 1973 (29 U.S.C. 794a) is amended—

25 (A) in subsection (a)(1)—

1 (i) by inserting “(A)” after “(a)(1)”,

2 (ii) by striking “706(k)” and in-
3 serting “706(j)”,

4 (iii) by striking “through (k)” and
5 inserting “through (j)”, and

6 (iv) by adding at the end the fol-
7 lowing:

8 “(B) The first sentence of this paragraph,
9 as in effect immediately before the effective
10 date of the Federal Employee Fairness Act of
11 1994, shall apply with respect to employment
12 in the Library of Congress.”, and

13 (B) in subsection (b) by striking “In”
14 and inserting “Except as provided in sub-
15 section (a)(1), in”.

16 (b) OPPORTUNITY TO COMMENCE CIVIL AC-
17 TION.—If a complaint filed under section 15 of
18 the Age Discrimination in Employment Act of
19 1967 (29 U.S.C. 633a), or section 501 of the Re-
20 habilitation Act of 1973 (29 U.S.C. 791), with
21 the Equal Employment Opportunity Commis-
22 sion is pending in the period beginning on the
23 date of the enactment of this Act and ending
24 on December 31, 1996, the individual who
25 filed such complaint may commence a civil ac-

1 **tion under such section not later than June**
2 **30, 1997.**

3 **SEC. 4. AMENDMENTS TO TITLE 5 OF THE UNITED STATES**
4 **CODE.**

5 **(a) GRIEVANCE PROCEDURES.—Section 7121**
6 **of title 5, United States Code, is amended—**

7 **(1) in subsection (a)(1) by inserting**
8 **“administrative” after “exclusive”, and**
9 **(2) in subsection (d)—**

10 **(A) by inserting “(1)” after “(d)”,**

11 **(B) in the first sentence by insert-**
12 **ing “, in the discretion of the ag-**
13 **grieved employee,” after “may”, and**

14 **(C) in the last sentence by strik-**
15 **ing “Selection” and all that follows**
16 **through “any other”, and inserting**
17 **the following:**

18 **“(2) An employee may commence, not later**
19 **than 120 days after a final decision, a civil ac-**
20 **tion in an appropriate district court of the**
21 **United States for de novo review of a”.**

22 **(b) ACTIONS INVOLVING DISCRIMINATION.—**
23 **Section 7702 of title 5, United States Code, is**
24 **amended to read as follows:**

1 **“§ 7702. Actions involving discrimination**

2 **“(a)(1) Notwithstanding any other provi-**
3 **sion of law, in the case of any employee or ap-**
4 **plicant for employment who—**

5 **“(A) is affected by—**

6 **“(i) an action which the employee**
7 **or applicant may appeal to the Merit**
8 **Systems Protection Board, or**

9 **“(ii) an action, not described in**
10 **clause (i)—**

11 **“(I) on the part the Equal Em-**
12 **ployment Opportunity Commis-**
13 **sion, and**

14 **“(II) with respect to which the**
15 **employee or applicant makes an**
16 **election under section**
17 **717(e)(2)(B)(i)(II) of the Civil**
18 **Rights Act of 1964, and**

19 **“(B) alleges that a basis for the action**
20 **was discrimination prohibited by—**

21 **“(i) section 717 of the Civil Rights**
22 **Act of 1964 (42 U.S.C. 2000a-16),**

23 **“(ii) section 6(d) of the Fair Labor**
24 **Standards Act of 1938 (29 U.S.C.**
25 **206(d)),**

1 **“(iii) section 501 of the Rehabilita-**
2 **tion Act of 1973 (29 U.S.C. 791),**

3 **“(iv) sections 12 and 15 of the Age**
4 **Discrimination in Employment Act of**
5 **1967 (29 U.S.C. 631, 633a), or**

6 **“(v) any rule, regulation, or policy**
7 **directive prescribed under any provi-**
8 **sion of law described in clauses (i)**
9 **through (iv) of this subparagraph,**
10 **the employee or applicant may raise the ac-**
11 **tion as provided in paragraph (2).**

12 **“(2) For purposes of paragraph (1), the**
13 **employee shall raise the action by filing a**
14 **complaint in accordance with section 717 of**
15 **the Civil Rights Act of 1964 and shall make a**
16 **request described in section 717(e)(2)(B)(i) se-**
17 **lecting the procedures specified in one of the**
18 **following subparagraphs:**

19 **“(A) The administrative and judicial**
20 **procedures provided under sections 7701**
21 **and 7703.**

22 **“(B) The administrative and judicial**
23 **procedures provided under section 7121.**

1 **“(C) The administrative and judicial**
2 **procedures provided under section 717 of**
3 **the Civil Rights Act of 1964.**

4 **“(3) The agency (including the Board and**
5 **the Equal Employment Opportunity Commis-**
6 **sion) that carries out such procedures shall**
7 **apply the substantive law that is applied by**
8 **the agency that administers the particular**
9 **law referred to in subsection (a)(1) that pro-**
10 **hibits the conduct alleged to be the basis of**
11 **the action referred to in subsection (a)(1)(A).**

12 **“(b) If—**

13 **“(1) an employee elects the proce-**
14 **dures specified in subsection (a)(2)(C),**
15 **and**

16 **“(2) the Equal Employment Oppor-**
17 **tunity Commission dismisses under sec-**
18 **tion 717(f)(5)(A) of the Civil Rights Act of**
19 **1964 a claim that is based on the action**
20 **raised by the employee,**

21 **then the employee shall have 20 days in which**
22 **to raise the action under the procedures spec-**
23 **ified in subparagraph (A) or (B) of subsection**
24 **(a)(2), except that no allegation of a kind de-**

1 scribed in subsection (a)(1)(B) may be raised
2 under this subsection.

3 “(c) If at any time after the 120th day fol-
4 lowing the receipt under section 717(e)(3)(B)
5 of the Civil Rights Act of 1964 of a complaint
6 as a result of an election made under section
7 717(e)(2)(B)(i) of the Civil Rights Act of 1964
8 to raise an action under the procedures speci-
9 fied in subsection (a)(2)(A) there is no judi-
10 cially reviewable action, an employee shall be
11 entitled to file, not later than 240 days after
12 making such election, a civil action in an ap-
13 propriate district court of the United States
14 for de novo review of the action raised under
15 subsection (a).

16 “(d) Nothing in this section shall be con-
17 strued to affect the right to trial de novo
18 under any provision of law described in sub-
19 section (a)(1) after a judicially reviewable ac-
20 tion.”.

21 (c) DISCIPLINARY ACTION.—(1) Section 1214
22 of title 5, United States Code, is amended by
23 adding at the end the following:

24 “(g)(1) Whenever the Office of Special
25 Counsel receives any copy of an order, in ac-

1 cordance with section 717(m) of the Civil
2 Rights Act of 1964, with respect to a claim
3 arising under section 717 of the Civil Rights
4 Act of 1964, section 15(a) of the Age Discrimi-
5 nation in Employment Act of 1967, or section
6 501 of the Rehabilitation Act of 1973, the Spe-
7 cial Counsel shall investigate the matter to
8 the extent necessary to determine whether
9 there are reasonable grounds to believe that
10 a prohibited personnel practice described in
11 section 2302(b)(1) has occurred and, if so,
12 shall seek the appropriate disciplinary action
13 under section 1215.

14 “(2) A determination under this sub-
15 section shall be made not later than 180 days
16 after the appropriate date under paragraph
17 (3) for the last applicable event described in
18 such paragraph.

19 “(3)(A) With respect to a claim—

20 “(i) to which an order issued by an
21 administrative judge of the Equal Em-
22 ployment Opportunity Commission ap-
23 plies, and

24 “(ii) with respect to which the ag-
25 grieved employee neither—

1 **“(I) commences a civil action in**
2 **accordance with section 717(f)(7)(E)(i)**
3 **of the Civil Rights Act of 1964, nor**

4 **“(II) requests appellate review in**
5 **accordance with section**
6 **717(f)(7)(E)(ii) of the Civil Rights Act**
7 **of 1964,**

8 **the appropriate date is the date on which the**
9 **Office of Special Counsel receives a copy of an**
10 **order (referred to in paragraph (1)) from the**
11 **administrative judge.**

12 **“(B) With respect to a claim—**

13 **“(i) to which an order issued by the**
14 **Equal Employment Opportunity Commis-**
15 **sion applies, and**

16 **“(ii) with respect to which the ag-**
17 **grieved employee does not commence a**
18 **civil action in accordance with section**
19 **717(g)(3)(D),**

20 **the appropriate date is the date on which the**
21 **Office of Special Counsel receives a copy of an**
22 **order (referred to in paragraph (1)) from the**
23 **Commission.**

24 **“(C) With respect to a claim to which a**
25 **final judgment issued by a court of the United**

1 **States applies, the appropriate date is the**
2 **date on which the Office of Special Counsel**
3 **receives a copy of an order (referred to in**
4 **paragraph (1)) from such court.**

5 **“(4) For the purpose of this subsection—**

6 **“(A) the term ‘order’ means an order**
7 **issued on the merits;**

8 **“(B) the term ‘judgment’ means a**
9 **judgment issued on the merits; and**

10 **“(C) the term ‘final judgment’ means a**
11 **judgment that is either—**

12 **“(i) not reviewed by any other**
13 **court that has authority to review**
14 **such judgment; or**

15 **“(ii) not reviewable by any other**
16 **court.”.**

17 **(2) Section 1218 of title 5, United States**
18 **Code, is amended—**

19 **(A) by inserting “(a)” before the first**
20 **sentence; and**

21 **(B) by adding at the end the follow-**
22 **ing:**

23 **“(b) Any statistical or other information**
24 **provided under the first sentence of sub-**
25 **section (a) shall specify with respect to each**

1 particular prohibited personnel practice, the
2 extent to which such information relates to
3 any matter referred to in section 1214(g), the
4 disposition of such practice, and the basis for
5 such disposition.”.

6 (d) RECORDKEEPING.—(1) Chapter 23 of
7 title 5, United States Code, is amended by
8 adding at the end the following:

9 “§ 2306. Federal personnel records

10 “(a) For the purpose of this section—

11 “(1) the term ‘personnel action’ has
12 the meaning given such term in section
13 2302(a)(2)(A);

14 “(2) the term ‘record’ has the meaning
15 given such term in section 552a(a)(4); and

16 “(3) the term ‘employee’ means an em-
17 ployee or applicant for employment in
18 any entity of the Federal Government to
19 which—

20 “(A) section 717(a) of the Civil
21 Rights Act of 1964 applies;

22 “(B) section 501 of the Rehabilita-
23 tion Act of 1973 applies; or

1 **“(C) sections 12 and 15 of the Age**
2 **Discrimination in Employment Act of**
3 **1967 apply;**

4 **but does not include any employee or ap-**
5 **plicant for employment with respect to**
6 **whom section 117, or title III (excluding**
7 **section 320), of the Civil Rights Act of**
8 **1991 applies.**

9 **“(b) Records relating to any personnel ac-**
10 **tion taken with respect to an employee shall**
11 **be maintained by the employing authority for**
12 **at least the greater of—**

13 **“(1) 270 days after the effective date**
14 **of the personnel action to which such**
15 **records relate; or**

16 **“(2) the period of time otherwise re-**
17 **quired under applicable provisions of**
18 **law, rule, or regulation, if any.**

19 **“(c) The Office of Personnel Management,**
20 **in consultation with the Equal Employment**
21 **Opportunity Commission, shall issue guide-**
22 **lines for the implementation of this section by**
23 **an entity of the Federal Government (as de-**
24 **finied in section 701 of the Civil Rights Act of**
25 **1964).”.**

1 **(2) The table of sections for chapter 23 of**
2 **title 5, United States Code, is amended by**
3 **adding at the end the following:**

“2306. Federal personnel records.”.

4 **(e) CONFORMING AMENDMENTS.—Section**
5 **7703 of title 5, United States Code, is amend-**
6 **ed—**

7 **(1) in subsection (b)—**

8 **(A) in paragraph (1) by striking**
9 **“(1) Except as provided in paragraph**
10 **(2) of this subsection, a” and inserting**
11 **“A”, and**

12 **(B) by striking paragraph (2), and**
13 **(2) in subsection (c)—**

14 **(A) in paragraph (3) by striking**
15 **the semicolon at the end and insert-**
16 **ing a period, and**

17 **(B) by striking “except” and all**
18 **that follows through the period at the**
19 **end.**

20 **(f) RIGHT TO INTERVENE.—Section**
21 **1212(c)(2) of title 5, United States Code, is**
22 **amended—**

23 **(1) by striking “(2)” and inserting**
24 **“(2)(A)”;** and

1 **(2) by adding at the end the follow-**
2 **ing:**

3 **“(B) Consent under subparagraph (A)**
4 **shall not be required, in the case of an appeal**
5 **from an action, if—**

6 **“(i) section 7513(d) is the provision**
7 **making the action appealable to the**
8 **Board;**

9 **“(ii) the appeal is brought in a matter**
10 **with respect to which a copy of an order**
11 **has been received by the Office of Special**
12 **Counsel under section 717(m) of the Civil**
13 **Rights Act of 1964; and**

14 **“(iii) 1 of the grounds for the action**
15 **being appealed is discrimination of a**
16 **type described in section 2302(b)(1).”.**

17 **SEC. 5. TECHNICAL AMENDMENTS.**

18 **Section 717(b) of the Civil Rights Act of**
19 **1964 (42 U.S.C. 2000e-16(b)) is amended by**
20 **striking “Civil Service Commission” each**
21 **place it appears and inserting “Commission”.**

22 **SEC. 6. ISSUANCE OF PROCEDURAL GUIDELINES AND NO-**
23 **TICE RULES.**

24 **(a) ISSUANCE OF CERTAIN RULES AND GUIDE-**
25 **LINES.—After providing notice in accordance**

1 with section 553(b) of title 5, United States
2 Code, and not later than 1 year after the date
3 of the enactment of this Act, the Equal Em-
4 ployment Opportunity Commission shall
5 issue—

6 (1) rules to assist entities of the Fed-
7 eral Government to comply with section
8 717(d) of the Civil Rights Act of 1964, as
9 added by section 2 of this Act,

10 (2) rules establishing—

11 (A) a uniform written official no-
12 tice to be used to comply with section
13 717 of such Act, as added by section 2
14 of this Act, and

15 (B) detailed requirements applica-
16 ble to collecting and preserving docu-
17 ments and information under section
18 717(d), as added by section 2 of this
19 Act,

20 (3) guidelines describing an alter-
21 native dispute resolution process that
22 may be used by entities of the Federal
23 Government (as defined in section 701(p)
24 of the Civil Rights Act of 1964 (7 U.S.C.
25 2000e(p))), in their discretion, consistent

1 **with the administrative process applica-**
2 **ble to claims under section 717 of such**
3 **Act, and**

4 **(4) rules establishing the criteria,**
5 **standards, and process for obtaining**
6 **Commission simultaneous approval of—**

7 **(A) a process for precomplaint**
8 **conciliation of the kind required by**
9 **section 717(c)(1)(A)(i) of the Civil**
10 **Rights Act of 1964, and**

11 **(B) an alternative dispute resolu-**
12 **tion process for purposes of such sec-**
13 **tion.**

14 **(b) PUBLICATION OF PROPOSED GUIDE-**
15 **LINES.—Not later than 180 days after the date**
16 **of the enactment of this Act, the Equal Em-**
17 **ployment Opportunity Commission shall pub-**
18 **lish in the Federal Register proposed guide-**
19 **lines of the kind described in subsection (a)(3)**
20 **and proposed rules of the kind described in**
21 **subsection (a)(4), and allow not less than 30**
22 **days for public comment before issuing guide-**
23 **lines and rules under paragraphs (3) and (4)**
24 **of subsection (a).**

1 **(c) STANDARDS FOR ALTERNATIVE DISPUTE**
2 **RESOLUTION PROCESSES.—The guidelines re-**
3 **quired by subsections (a) and (b) shall provide**
4 **for alternative dispute resolution processes**
5 **that include—**

6 **(1) procedural rules applicable to the**
7 **operation of such processes, including a**
8 **description of the roles of Federal em-**
9 **ployees and the authorized representa-**
10 **tives of such employees in such proc-**
11 **esses,**

12 **(2) an opportunity for meaningful**
13 **participation by Federal employees, and**
14 **their authorized representatives if appro-**
15 **priate, in the design and development of**
16 **such processes and such rules,**

17 **(3) methods for selecting and training**
18 **qualified facilitators, including the use of**
19 **nonparty neutrals not from the employ-**
20 **ing activities,**

21 **(4) providing to the parties access to**
22 **relevant documents and witnesses,**

23 **(5) application of decisional law and**
24 **legal principles,**

1 **(6) periodic evaluation of the efficacy**
2 **of facilitators,**

3 **(7) periodic evaluation of the efficacy**
4 **of the alternative dispute resolution proc-**
5 **ess and conciliation (including**
6 **precomplaint conciliation), and reporting**
7 **on the resolution and settlement of dis-**
8 **putes under such process, and**

9 **(8) confidentiality of communications**
10 **(including offers of settlement) among**
11 **participants in such process.**

12 **(d) IDENTIFICATION OF APPROVED ALTER-**
13 **NATIVE DISPUTE RESOLUTION PROCESSES.—Not**
14 **later than 21 months after the date of the en-**
15 **actment of this Act, and annually thereafter,**
16 **the Equal Employment Opportunity Commis-**
17 **sion shall publish in the Federal Register the**
18 **names of the entities of the Federal Govern-**
19 **ment (as defined in section 701 of the Civil**
20 **Rights Act of 1964) that provide a voluntary**
21 **alternative dispute resolution process ap-**
22 **proved by the Commission in accordance with**
23 **the rules in effect under subsection (a)(4).**

24 **(e) VOLUNTARY SETTLEMENT PROGRAM.—**
25 **The Equal Employment Opportunity Commis-**

1 sion shall issue rules establishing a program
2 and procedures, consistent with the adminis-
3 trative adjudication of claims under section
4 717 of the Civil Rights Act of 1964 as amended
5 by this Act, to foster the voluntary settlement
6 of such claims.

7 (f) REPORTING REQUIREMENT.—Section 705
8 of the Civil Rights Act of 1964 (42 U.S.C.
9 2000e-4) is amended by adding at the end the
10 following:

11 “(l) The Commission shall include in each
12 report made under subsection (e) the follow-
13 ing information separately identified with re-
14 spect to each entity of the Federal Govern-
15 ment for the period for which such report is
16 made:

17 “(1) The number of Federal employees
18 who participated in conciliation provided
19 under section 717(c)(1)(A)(ii) as added by
20 the Federal Employee Fairness Act of
21 1994.

22 “(2) The number of such employees
23 who entered into a settlement under sec-
24 tion 717, as amended by such Act, for re-
25 lief of any kind.

1 **“(3) The number of such employees**
2 **who filed complaints under such section**
3 **717.**

4 **“(4) The number of other Federal em-**
5 **ployees who filed complaints under such**
6 **section.**

7 **The head of each such entity shall provide**
8 **such information timely to the Commission to**
9 **enable the Commission to comply with this**
10 **subsection.”.**

11 SEC. 7. ISSUANCE OF RULES REGARDING CLASSIFIED IN-
12 FORMATION.

(a) RULES REQUIRED.—The Equal Employment Opportunity Commission, in consultation with the Director of Central Intelligence, the Secretary of Defense, and the Director of the Information Security Oversight Office of the General Services Administration, shall issue rules to ensure the protection of classified information and national security information in administrative proceedings under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16). Such rules shall include a requirement that complaints filed under section 717(c) of such Act that bear on classified in-

1 **formation shall be handled only by adminis-**
2 **trative judges, and other personnel, who have**
3 **appropriate security clearances.**

4 **(b) DEFINITION.—For purposes of sub-**
5 **section (a), the term “classified information”**
6 **has the meaning given such term in section**
7 **606(1) of the National Security Act of 1947 (50**
8 **U.S.C. 426(1)).**

9 **SEC. 8. RULES OF CONSTRUCTION.**

10 **Any reference in any law (other than title**
11 **VII of the Civil Rights Act of 1964) to any pro-**
12 **vision of title VII of the Civil Rights Act of**
13 **1964 amended by this Act shall be deemed to**
14 **be a reference to such provision as amended**
15 **by this Act.**

16 **SEC. 9. SENSE OF THE CONGRESS.**

17 **(a) APPROPRIATION OF FUNDS.—It is the**
18 **sense of the Congress that because the**
19 **amendments made by this Act—**

20 **(1) impose on the Equal Employment**
21 **Opportunity Commission additional ad-**
22 **ministrative responsibility in the process-**
23 **ing of claims of Federal employees based**
24 **on discrimination in employment, and**

16 **SEC. 10. EFFECTIVE DATES; APPLICATION OF AMEND-**
17 **MENTS.**

22 **(b) EFFECTIVE DATE OF SECTIONS 6 AND 7.—**
23 **Sections 6 and 7 shall take effect on the date**
24 **of the enactment of this Act.**

1 **(c) APPLICATION OF AMENDMENTS.—The**
2 **amendments made by this Act shall not apply**
3 **with respect to—**

4 **(1) complaints filed under section 717**
5 **of the Civil Rights Act of 1964 (42 U.S.C.**
6 **2000e-16) before the effective date of this**
7 **Act; and**

8 **(2) proceedings pending under title 5**
9 **of the United States Code before the ef-**
10 **fective date of this Act.**

HR 2721 RH—2

HR 2721 RH—3

HR 2721 RH—4